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International covenant
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Distr.
GENERAL

CCPR/C/IRL/98/2*
28 April 1999

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of States parties due in 1996

Addendum

IRELAND

[29 September 1998]

* By decision of the Human Rights Committee the symbol of reports will henceforth be simplified to indicate the initials of the States party, the year of submission and the number of the report.

GE.99-41316 (E)

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## ABBREVIATIONS

| | |
|---|---|
| CPT | European Committee for the Prevention of Torture and Inhuman and Degrading Treatment |
| CSPE | Civic, Social and Political Education |
| EEA | Employment Equality Agency<br>European Economic Area (depending on the context in which used) |
| EHRR | European Human Rights Reports |
| EU | European Union |
| GP | General Practitioner |
| ILO | International Labour Organization |
| ILRM | Irish Law Reports Monthly |
| IR | Irish Reports |
| IRTC | Independent Radio and Television Commission |
| MEP | Member of the European Parliament |
| NWCI | National Women's Council of Ireland |
| NESF | National Economic and Social Forum |
| NGO | Non-governmental organization |
| RSE | Relationships and Sexuality Education |
| RTÉ | Radio Teilifís Éireann - the National Broadcasting Authority |
| SI | Statutory Instrument |
| SPHE | Social and Personal Health Education |
| TD | Teachta Dála - Member of Parliament |

# I. INTRODUCTION

1. Ireland has prepared its second periodic report in accordance with article 40 of the International Covenant on Civil and Political Rights. It has been coordinated by the Human Rights Unit in the Political Division of the Department of Foreign Affairs, in cooperation with all government departments and the Office of the Attorney-General.

2. This report describes on an article-by-article basis the legislative, judicial, administrative or other measures which are in place or have been adopted in Ireland to give effect to the provisions of the Covenant since the completion of the first national report in 1992.

3. Ireland lodged its instrument of ratification for the International Covenant on Civil and Political Rights with the United Nations Secretariat on 8 December 1989. In light of initiatives subsequently taken, the Irish Government has since withdrawn one of seven reservations lodged at the time of ratification. The reservation pertaining to article 6, paragraph 5, of the Covenant was subsequently made redundant with the abolition of the death penalty (Criminal Justice Act, 1990). Ireland is in the process of withdrawing two more reservations - the enactment of the Criminal Procedure Act, 1993 has facilitated the withdrawal of a reservation to article 14.6 which stated that the provision of compensation may be by administrative means rather than by law. Furthermore, the recent changes in Ireland's laws regulating marriage, and more specifically the dissolution thereof, have paved the way for the withdrawal of the reservation lodged with the United Nations with regard to article 23 (4). It is hoped that both reservations will be lifted by the time the second report is examined.

4. Ireland is a sovereign, independent, parliamentary democracy. The National Parliament (the Oireachtas) consists of the President and two Houses: a House of Representatives (Dáil Éireann) and a Senate (Seanad Éireann). The functions and powers of the President, Dáil and Seanad derive from the Constitution of Ireland (Bunreacht na hÉireann). All laws passed by the Oireachtas must conform to the Constitution.

5. The minimum voting age in Ireland is 18 years. The electoral system in elections to the Dáil is proportional representation by means of the single transferable vote in multi-seat constituencies. There are 166 members of Dáil Éireann. The single transferable vote is also used for the election of the President, Members of the European Parliament, Local Authorities and 49 of the 60 members of the Seanad. The remaining 11 Senators are nominated by the Taoiseach (Prime Minister).

6. Under the Constitution, the sole power of making laws is vested in the Oireachtas. However, the relationship between the law of the European Community and national law is that Community law is "supreme" and therefore Community law prevails in the event of conflict with national law. In addition, Community law may be directly effective and may be pleaded by litigants before domestic courts. These principles necessitated an amendment to the Constitution in 1972 which was approved by a referendum. Two further referendums approved additional amendments to the Constitution enabling the

State to ratify amendments to the European Community treaties set out in the Single European Act (1987) and the Treaty on European Union (1992). The Constitution has been amended on 18 occasions since 1941. 1/

7. Irish law is based on the Common Law as modified by subsequent legislation and by the Constitution of 1937. Statutes passed by the British Parliament before 1922 continue to have the force of law, unless inconsistent with the Constitution of 1937, or unless repealed by the Oireachtas. In accordance with the Constitution, justice is administered in public in courts established by law. Judges are appointed by the President on the advice of the Government.

8. Judges of the Supreme, High and Circuit Courts retire at the age of 70 except for Judges of the Supreme and High Courts who were serving on or before 15 December 1995, who retire at age 72. Judges of the District Court retire at the age of 65, subject to a power to extend their terms of office to age 70 conferred on a committee consisting of the Chief Justice, the President of the High Court and the Attorney-General.

9. Local government is administered by 114 local authorities funded partly by State grants and partly by local taxes on non-residential property. Local government has responsibility for public housing, water and sanitation, road maintenance, vocational education and certain other services. Under the Health Act, 1970, statutory responsibility for the administration of health services in Ireland is vested in eight regional Health Boards with each Board having responsibility for the administration of health and personal social services in its functional area, and funded by the Department of Health and Children. Other aspects of administration operate on a regional basis including tourism promotion, industrial development and fishery conservation.

10. The legal basis for the present Irish system of public administration is contained in the Ministers and Secretaries Act, 1924. This Act, and its subsequent amendments, provide a statutory classification of the functions of Government under the various Departments of State. A Supreme Court decision of 1992, to the effect that discussions within Cabinet were absolutely confidential, was changed by Constitutional Amendment in 1997 so that the confidentiality can be lifted by the High Court in the interests of the administration of justice, or for the purpose of a public inquiry authorized by the Oireachtas.

11. The Public Service Management Act, 1997 gives a new statutory framework for the allocation of authority, responsibility and accountability within and across Government Departments (a copy of the Act is herewith attached*).

12. Recruitment to the Civil Service is by open public competition administered by an independent State Commission. At present there are approximately 29,300 people employed in the Civil Service. Civil servants above clerical level are precluded from involvement in party political activity.

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* All attachments referred to in the present document are available for consultation at the secretariat.

13. The Human Rights Committee in its comments on Ireland's first periodic report recommended that Ireland take effective steps to incorporate all the provisions of the present Covenant into law and ensure that they are accorded a status superior to that of domestic legislation (A/48/40, para. 610). Article 29.3 of the Constitution states that "Ireland accepts the generally recognized principles of international law as its rule of conduct in its relations with other States". Like other common law countries, Ireland has a "dualist" system under which international agreements to which Ireland becomes a party are not automatically incorporated into domestic law. Article 29.6 of the Constitution of Ireland provides that "No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas". This provision has been interpreted as precluding the Irish courts from giving effect to an international agreement, such as the European Convention on Human Rights, if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law.

14. Where Ireland wishes to adhere to an international agreement it must, therefore, ensure that its domestic law is in conformity with the agreement in question. In some cases the entire contents of an international agreement are transposed into domestic law by providing that the agreement shall have the force of law within the State. An example is the Diplomatic Relations and Immunities Act 1967, which provides that the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations have the force of law in Ireland. In other cases it is necessary to transpose only certain provisions of an agreement because other provisions are either already incorporated in domestic law or are of a nature not requiring incorporation. Sometimes it may be that for the same reason no transposition provisions at all are required. The report of the Constitution Review Group (see paragraphs 236-237 for more details) when considering the dualist system found, at page 120, inter alia that it "gives the Government valuable flexibility as to the most appropriate way to implement an international agreement, not excluding making it part of domestic law".

15. The principles of dualism apply equally to human rights agreements such as the International Covenants and United Nations conventions as well as the European Convention on Human Rights and Fundamental Freedoms. Here, however, further considerations arise which make direct incorporation of such agreements into domestic law difficult to achieve. The provisions of the Covenant are, for the most part, of a type which one would expect to find already covered by the human rights provisions of a Constitution or a Bill of Rights, and such similar provisions are indeed contained in the Constitution of Ireland. Furthermore, as outlined in the core document (HRI/CORE/1/Add.15, paras. 34-41), the list of fundamental rights expressly protected by the Irish Constitution has been strengthened by the development of the doctrine of unenumerated personal rights. Over the last 30 years the courts have recognized as many as 20 unenumerated personal rights, including the right to found a family, the right to travel and the right to have access to the courts. Thus, it would generally be inappropriate to make provision for fundamental rights by way of ordinary legislation which would be inferior and subject to existing constitutional provisions. It has also been argued that such a two-tiered approach would be ineffective. Either the provision in

ordinary law differs from the fundamental norm, in which case it is ineffective to the extent that it differs, or it is the same, in which case it is superfluous.

16. Direct incorporation could, therefore, only be achieved by way of constitutional amendment. There are a number of reasons why this course has not been taken. Firstly, where existing constitutional guarantees already cover a particular area, it would be inappropriate to amend a constitution to insert a second parallel provision, and would be likely to prove either redundant or a source of potential confusion and even conflict. Such an amendment would also involve jettisoning 60 years of well-established and sophisticated jurisprudence built up around the existing constitutional provisions, addressing both the specified and unspecified rights protected thereunder. In this regard, a leading commentary on constitutional issues has stated that "the overall impact of the courts on modern Irish life, in their handling of constitutional issues, has been beneficial, rational, progressive and fair". 2/ Furthermore, the process of amending the Constitution is a difficult one and would be particularly difficult to justify where no substantive change in the law was being sought. Finally, while it might appear that to have constitutional provisions in the precise terminology of the Covenant would be legally advantageous, the risk would remain that the domestic tribunal would interpret a domestic provision, identical to one in the Covenant, in a different way to that of the Human Rights Committee. Taking all of these considerations into account, and given the advanced system of judicial review of legislation in Ireland, the solution of direct incorporation of the Covenant into Irish law has not, therefore, been adopted. It is considered preferable in the Irish context to build on and improve the existing fundamental rights provisions of the Constitution. The Constitution Review Group in its report carried out a detailed analysis of the fundamental rights provisions of the Constitution in light, inter alia, of Ireland's international human rights instruments. Their findings are currently being considered by the Government.

17. It follows then from the "dualist" nature of Ireland's legal system that the provisions of the Covenant cannot be invoked before and directly enforced by the courts, and that it is necessary to examine the extent to which Irish law itself correctly reflects the obligations of the Covenant. Ireland, in acceding to the Covenant, has undertaken a continuing obligation to examine and improve where possible the provisions of domestic law in the light of the standards laid down in the Covenant.

18. An exception to the power to review legislation is provided for by article 28.3.3 of the Constitution:

> "Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this sub-section 'time of war' includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency

exists affecting the vital interests of the State and 'time of war or armed rebellion' includes such time after the remuneration of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist."

19. No legislation is currently in force to which article 28.3.3 has application. The last such Act was the Emergency Powers Act, 1976 whose operative part was in force only between 16 October 1976 and 15 October 1977. The Emergency Powers Act, 1976 expired when the national emergency declared to exist in 1976 was ended by resolutions passed by both Houses of the Oireachtas on 7 February 1995 and 16 February 1995 (see paragraphs 108-110 for more details).

20. The results of the 1996 census reveal that the population has reached its highest level this century. The total population now stands at 3,626,087, which represents an increase of more than 100,000 in the previous five years. The major population centres are Dublin, Cork, Galway, Limerick and Waterford, with nearly 6 out of 10 people living in urban areas, and 1 in 4 living in the greater Dublin area. The eastern seaboard province of Leinster accounts for 53.1 per cent of the population, compared with 38.7 per cent in 1926.

21. An examination of the census records trends similar to those in other European countries, e.g. high life expectancy, low death rate, low infant and maternal mortality. The census also reveals a high dependency ratio as indicated in the large percentage of those under 15 and over 65. In particular, the results show that the population is ageing at a rapid pace - the average age is now 33.6 as compared with 30.8 in 1981, and that the average number of children per family now stands at 1.8.

22. No questions on religion were asked in the 1996 census, as they are traditionally asked every 10 years. Results from the 1991 census, however, reveal that the majority of Irish people belong to Christian religious denominations. Roman Catholics make up 92 per cent of the population whilst 3.4 per cent belong to various Protestant denominations. There is also a small but well-established Jewish community. In recent years a small Muslim community has developed, mainly in Dublin. The remainder belonged either to smaller religious groups, or have no specific religious affiliation.

23. Article 8 of the Constitution provides that Irish, as the national language, is the first official language, and English is recognized as a second official language. English is the more widely spoken language throughout the country, although Irish is spoken as the first language in areas known as the Gaeltacht, situated mainly along the western seaboard. However, Irish speakers are also to be found in all parts of the country. The population (aged three years and over) of the officially defined Gaeltacht in the 1991 census was 79,563, of whom 56,469 or 71 per cent are Irish-speaking. The constitutional position of Irish as the first official language and the continued policy of successive Governments to revive the Irish language ensures that the rights of Irish speakers are protected.

24. The courts have recognized the rights of litigants to conduct their cases through either language.

## II. ARTICLES OF THE COVENANT

### Article 1

25. The principles contained in this article are accepted by Ireland and are reflected in particular in articles 5, 6 and 10 of the Constitution, and by the support given by Ireland in the various United Nations bodies to resolutions concerning these rights.

26. Ireland, as a sovereign, independent, democratic State, observes the generally recognized principles of international law, and is fully committed to the principles contained in this article. These principles also form an integral part of Irish aid policy.

27. Ireland has no colonies and is not responsible for the administration of any Non-Self-Governing or Trust Territories.

### Article 2

28. As explained in the introduction to this report (paras. 13-17) international treaties are not self-executing in this country. Once the decision was made to accede to this Covenant the Government then identified those areas in which Irish law and practice did not conform with the provisions contained therein, and in which legislation would be necessary, as well as identifying areas where reservations were regarded as appropriate. As a result of this examination legislative changes were deemed necessary in relation to the law on the death penalty and on incitement to hatred. The provisions of the Covenant were fully taken into account when drafting the new laws. During this process, and also in the course of drafting Ireland's first and second reports under this Covenant, every government department was consulted on its respective areas of responsibility, which of necessity brought the provisions of the Covenant to the attention of those responsible for the formulation and implementation of policy within Government and the administration generally.

29. This consultation process has since been augmented by the creation of a Standing Interdepartmental Committee on Human Rights (February 1997), comprising representatives from all government departments and mandated to consider all aspects of Ireland's international human rights obligations. This Committee will meet several times a year, and is particularly concerned with the preparation of national reports under the various international instruments already ratified, and with expediting the legislation necessary for the ratification of additional instruments.

30. The process has been further enhanced by the establishment of a Joint Department of Foreign Affairs/Non-Governmental Organizations (NGO) Standing Committee on Human Rights in June 1997. The establishment of the Committee reflects the importance being attached both to human rights as a central element of Irish foreign policy and to the role of the Irish NGO community in promoting human rights. It provides a framework for a regular exchange of

views between the Department and the NGO community on the international human rights aspects of Irish foreign policy, and is intended to complement and enhance the extensive network of informal bilateral contacts which already exists. The Committee comprises representatives of a number of NGOs and the Department of Foreign Affairs. The Committee will meet approximately three times a year, with an Annual Forum on Human Rights to which all interested NGOs and experts will be invited.

HUMAN RIGHTS EDUCATION

31. The Human Rights Committee in its comments on Ireland's first periodic report (A/48/40, para. 616) recommended that efforts in the area of human rights education be increased.

32. Human Rights education features in many forms throughout the curriculum of primary and secondary schools, as well as more in-depth study carried out as part of third level education courses.

Primary Education

33. The Primary school curriculum, as revised in 1971, is based upon a child-centred approach. To this end, teaching and learning are carried out through activities related to the child's environment. Concern for human rights informs the whole of the primary curriculum. In areas such as Language and Religious Education, for example, matters such as intolerance, racism, minorities and cultural diversity are frequently topics for discussion.

34. The 1971 curriculum contained, inter alia, the subject of Civics, which is described in the Teacher's Handbook as:

> "That part of school activity which helps the child to become a better part of society and to appreciate his rights and his obligations towards it. Accordingly, the child should be made conscious of his shared membership of various groups (family, local, national) and should gain some knowledge of their nature and structure. The main concern is not, however, with instruction on the rights and duties of citizenship but with the development of acceptable social and moral attitudes which take into account the rights of other members of society."

35. The principles contained in the 1971 curriculum were endorsed in the 1990 reports of the Review Body on the Primary Curriculum, and the Primary Education Review Body. In its report the Review Body on the Primary Curriculum also identified among the aims of primary education the following:

> "To help children to understand the society and environment in which they live, the interdependence of people and nations and to foster a spirit of cooperation and the capacity and willingness to contribute in a critical but positive manner towards the development of society, and to help children to respect, appreciate and understand their own and other cultural identities."

36. In 1991, the Minister for Education invited the National Council for Curriculum and Assessment to conduct a continuing review of the primary

curriculum, whilst retaining the basic principles outlined in 1971. Documentation is almost completed and it is planned that the revised curriculum should be implemented on a phased basis from 1998 onwards. These revised curricula make specific provision for aspects of Human Rights Education with the revision of existing subjects and introduction of new programmes as described below

Social and Personal Health Education (SPHE)

37. A SPHE programme is currently being finalized by the National Council for Curriculum and Assessment (June 1996) and will contain clear pupil-centred objectives in all aspects of social, personal and health education. These learning objectives include the concepts, knowledge, and personal skills which will enable young people to make safe and healthy choices, now, and throughout their lives. The aims for SPHE include the following:

To foster the social development of the child and enable him/her to care for and respect other people;

To establish a framework of attitudes and values about oneself and others within a moral and spiritual context;

To develop a sense of social responsibility, a commitment to active and participative citizenship and an appreciation of the democratic way of life;

To enable the child to respect human and cultural diversity and appreciate and understand the interdependent nature of the world;

To enable the child to become aware of some of the individual and community rights and responsibilities that come from living democracy;

To enable the child to appreciate and respect the diversity that exists in society and the positive contributions of various ethnic, cultural, religious and social groups.

38. The essential element which links the many learning objectives in the programme is the promotion of positive self-identity and self-esteem in each pupil. Thus, the programme aims to enable young people to preserve and enhance their personal integrity and concept of self-worth.

39. Each school's policy will take full account of the role of parents as primary educators and the need for continuing partnership between parents, teachers and school managers. It will respect the personal identity and background of all students.

Relationships and Sexuality Education (RSE)

40. The RSE programme addresses issues such as an understanding of the dignity, uniqueness and well-being of others, understanding the nature, growth and development of relationships within families and in wider contexts and developing an awareness of different family patterns.

41. The RSE programme is intrinsically linked to the atmosphere of the home, school and classroom. The cultivation of a supportive climate and culture in the home and school, the collaborative and positive approach of the parent and teacher and the use of appropriate methodologies will be central to the success of the RSE programme.

42. The work of RSE in the school is designed to be supportive of the efforts of parents and their concerns for the health, safety, security and well-being of their children. Parents are aware of the contemporary cultural context in which adolescents must grow to adulthood. They are aware of the religious traditions, civic, moral, spiritual, familial and personal values and priorities which they hold to be important, and which they endeavour to hand on to their children. A school programme planned in consultation with parents should reflect these values.

43. In early 1997, the Department of Education published a policy pack on Relationships and Sexuality Education for use by schools in preparing their school's policy in this area. An information booklet for parents has been made available to all parents throughout the country. This documentation emphasizes that the procedures used to ensure meaningful input into the development of a school's policy and programme for RSE should involve the entire school community including parents, teachers and the board of management.

44. The consultation process includes the establishment of a committee, comprising representatives of parents, teachers and the school management authorities, to draft an RSE policy statement for the school. The draft statement will be disseminated to all parents and teachers and their views sought. The policy committee will then, if necessary, amend the policy statement, based on the feedback received. Each school will also set out what arrangements they propose to facilitate this process. These arrangements, which will be a matter for the individual school, will be set out in the school's policy document.

45. The consultation at local level follows on from an extensive process of consultation at national level, involving all partners in education. Every effort has been made to take the fullest possible account of the wide variety of views and concerns expressed during this process.

46. The majority of schools should be initiating this process during the 1997/98 school year and many will have already introduced it this year. It is expected that the majority of primary schools will introduce a Relationship and Sexuality Programme during the 1998/99 academic year. In order to facilitate schools in implementing this programme the Training and Support Service will be maintained.

Social, environmental and scientific education

47. The aims of social, environmental and scientific education include:

To foster an understanding of and concern for the total interdependence of all humans, all living things and the earth on which they live.

History

48. The aims and broad objectives of the history curriculum include:

(To enable the child to)

Acquire a balanced appreciation of cultural and historical inheritances from local, national and global contexts;

Tolerate and value a range of opinions and acquire open, questioning attitudes to the beliefs, values and motivations of others;

Develop tolerance towards minorities in society and appreciate the contribution of various ethnic, cultural, religious and social groups to the evolution of modern Ireland;

Develop a sense of personal, local, national, European and wider identities through studying the history and cultural inheritance of local and other communities.

Geography

49. The aims and broad objectives of the Geography programme include:

(To enable the child to)

Develop empathy with people from diverse environments and an understanding of human interdependence;

Learn of, and come to value the diversity of peoples, cultures and societies in Ireland and throughout the world, acquire an awareness of human interdependence and develop empathy with others.

50. The aims and broad objectives outlined above are expanded upon in the curriculum statements where they form the basis for more detailed short-term objectives appropriate to the various class levels. The associated Teacher Guidelines contain suggestions as to how these aims and objectives might best be realized in the classroom. Textbooks based on the revised primary curriculum have not yet been published but it is clear that they must contain material designed to facilitate the attainment of the above aims and objectives.

Secondary Education

51. Concern for human rights also informs many aspects of the curriculum for secondary schools. As is the case with the primary curriculum, these areas include Religious Education, History and Geography. The curricular area in which the relevant aims are most clearly and explicitly stated is Civic, Social and Political Education.

Civic, Social and Political Education (CSPE)

52. A new course in CSPE was introduced into approximately 280 secondary schools in September 1996 and will become part of the core (mandatory) Junior cycle curriculum for all schools from September 1997. It will be examined for the first time at Junior Certificate level in 1999.

53. The course provides an active exploration and study of citizenship at all levels (personal, national and global) in the context of contemporary social and political issues, and incorporates four units of study:

Unit 1: The individual and citizenship

Unit 2: The community

Unit 3: The State (Ireland)

Unit 4: Ireland and the world

54. These units of study are neither discreet nor mutually exclusive. In practice, there is a degree of overlap between the units, in terms of common topics, ideas and concepts. Throughout the course the emphasis is on active, participatory class-work, where "learning by doing" is encouraged.

55. The aims of CSPE include the following:

To enable pupils to develop their critical and moral faculties in accordance with a system of values based on respect for human rights and social responsibilities;

To encourage pupils to apply positive attitudes, imagination and empathy when learning about, and encountering, other people and cultures.

56. The knowledge objectives of the programme include:

Pupils should acquire basic knowledge and understanding of the various social groups to which every person belongs;

Pupils should acquire basic knowledge and understanding of the rights and responsibilities of every person as a citizen.

57. The conceptual objectives include:

Pupils should be made aware that every individual is entitled to basic, social, cultural, economic, civic, religious and political rights and to the safeguarding and protection of these rights. Denial of human rights results in the domination and oppression of people. Responsibilities go hand in hand with the rights accorded to individuals. Every person is responsible for their actions towards other people at all levels. Irresponsibility results in self-interested or careless actions which can be damaging to other people at all levels.

Pupils should be made aware of the dignity which every individual should be accorded as a human being and of how the provision of basic needs (e.g. food, health, security, education) is vital to human dignity. Failure to fulfil the basic needs of people results in loss of human dignity, deprivation, etc.

Pupils should be aware that laws and rules serve important purposes in any community or society, including the peaceful resolution of conflicts, the protection of life and property, etc. They order and set out common codes of conduct for relationships between individuals, and between individuals, groups and society as a whole. They are a means through which we ensure that the rights of individuals are protected and promoted. They inform us of our rights. Lawlessness and ignorance of the value of laws results in the denial of the rights of each and every individual and a decline in the quality of life in communities and society.

58. The objectives for the development of attitudes and values include:

A commitment to the values of human rights, social responsibilities and democracy;

An appreciation of and respect for differing viewpoints, ideas and cultures and an ability to empathize with the situation of other individuals and groups;

Awareness of and respect for the rights and responsibilities of all individuals and groups;

A commitment to oppose prejudice, discrimination and social injustice at all levels of society.

59. The Education Department of one of the country's main universities now offers a Higher Diploma in Curriculum Studies (CSPE), a one-year professional course designed on a modular basis to meet the needs of teachers and prospective teachers of CSPE. As part of the Special Issues in CSPE unit, one session is devoted to Human Rights Education and includes the following issues:

Human rights concepts;

Human rights instruments;

Human rights violations;

Human rights in a school context (linking rights to responsibilities; schools as places where discipline can be based on a human rights approach);

Case studies such as "Mothers of the Disappeared".

Third-Level Education

60. Human rights education is forming an increasingly important part of a range of university courses throughout the country.

61. Of the six main universities in Ireland, three provide a year-long course devoted entirely to human rights law to law students at undergraduate level, on an optional basis. The course syllabus in each case involves a detailed examination of the United Nations system for the promotion and protection of human rights, including the International Covenant on Civil and Political Rights. It also involves an examination of the system developed under the auspices of the Council of Europe. Each of these universities further provides the undergraduate option of Public International Law, which includes an examination of international human rights law (encompassing the present Covenant).

62. The Irish Centre for the Study of Human Rights is located in the Law Faculty of a fourth university, and has carried out human rights teaching and research since the 1970s. The primary function of the Centre is to collect and disseminate information about human rights in Ireland. It achieves this through teaching at undergraduate and post-graduate levels, by organizing major seminars, and more generally by informing members of the public on a case-by-case basis. The faculty augment a full year-long course on International Human Rights with related courses open to most students. These include courses on Economic and Social Rights, Media Law, Comparative Freedom of Expression and Disability Law.

63. Constitutional Law, which forms part of the core syllabus for all law students, involves a thorough examination of human rights in a domestic, constitutional context.

64. Human rights education also forms part of the syllabus outside the legal faculties, and in particular features strongly in courses available to post-graduate students in each of the main universities. Courses at undergraduate level range from diplomas in Development Studies, which examine structures which contribute to injustice and poverty to Social Studies courses which examine human rights perspectives on social work, an examination which draws on existing international human rights standards, the protection of human rights in Ireland, as well as specifically addressing the question of racism and discrimination in the context of a social worker, and how social workers must seek to develop an anti-racist, anti-discriminatory framework for practice. Post-graduate studies in International Relations, Ethnic and Racial Studies, Women's Studies, and European Integration all involve an examination of international human rights law and are a indicator of the wide range of human rights-related courses available throughout the country.

Education for Garda Síochána

65. Education in relation to human rights is customary for all members of the police force (known as Garda Síochána). This education takes the form of:

(a) Lectures on the Irish Constitution particularly relating to the articles on fundamental rights;

(b) Lectures on relevant statute law and statutory instruments, e.g. The Criminal Justice Act, 1984, and The Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána stations) Regulations, 1987;

(c) Lectures as part of in-service courses and specialized seminars. In this regard specialized seminars were held in 1985, 1986 and 1987 for all ranks, subsequent to the entering into force of the legislation referred to above.

66. Education of the police force in relation to the international law of human rights and international humanitarian law forms part of the ongoing instruction on all educational courses for police personnel. In particular the following topics are included as part of the series of instruction:

Universal Declaration of Human Rights;

International Covenant on Civil and Political Rights;

International Covenant on Economic, Social and Cultural Rights;

European Convention for the Protection of Human Rights and Fundamental Freedoms.

67. These matters touch on values enshrined in the Irish Constitution which is the fundamental basis of law in this jurisdiction and against which all other laws are to be judged. Recent legislation giving additional police powers has been balanced by safeguards and a right to redress against the members of the Garda Síochána who abuse their authority (see also article 7, paragraphs 130-132). In this regard it is worth noting that the extra powers given to the Garda Síochána under the Criminal Justice Act, 1984 constituted only one element of a three-tier package. The Treatment of Persons in Custody in Garda Síochána Stations, Regulations, 1987 and the Garda Síochána Complaints Act, 1986 formed the other parts. Furthermore the Criminal Justice (Drug Trafficking) Act, 1996 contains a number of safeguards, details of which are given under article 9.

Education for apprentice solicitors

68. Human rights education is also provided as part of the Law Society's professional course for apprentice solicitors. While the focus is predominantly on international human rights, it also covers the European Convention on Human Rights, and domestic rights issues. One of the lecturers teaching the course is from the office of the United Nations High Commissioner for Refugees, and as such can provide invaluable insight into the workings of international mechanisms to apprentice solicitors. The Law Society also offers a diploma in European law as part of its "Continuing Legal Education" programme, one module of which is human rights based.

Judicial training

69. As regards training for the judiciary, the Constitution provides that they shall be independent in the exercise of their judicial functions, subject only to the law. This excludes any action by the executive which could be

interpreted as a direct interference in the exercise by the judiciary of their functions, including imposing a training or briefing programme on them. Further information on judicial training is provided under article 14 (paras. 213-215).

DISCRIMINATION

70. Article 2 requires that the rights recognized in the Covenant shall be respected by States parties and ensured to all individuals within their territory "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Constitution of Ireland provides a general guarantee of equality before the law in article 40.1 which reads as follows:

> "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

71. It is clear that the making of distinctions by the State based on race, colour, religious, political or other opinion, national or social origin, property, birth or other status which affect citizens in their dignity as human beings would amount to a violation of the Constitution of Ireland.

Anti-discrimination Legislation

72. Two pieces of anti-discrimination legislation were introduced within the last two years, and subsequent to their passage through both Houses of the Oireachtas, were referred to the Supreme Court by the President to test their constitutionality. The first piece of legislation, the Employment Equality Bill, was published in July 1996 and dealt with discrimination in the area of employment on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race, colour, nationality, national or ethnic origin and membership of the Travelling Community.

73. The Equal Status Bill was published on 7 February 1997 and prohibited discrimination on the aforementioned grounds in non-workplace areas including the areas of education, disposal of property and accommodation and supply of goods and services. Services were defined broadly to include access to public places, banking and insurance services, entertainment, facilities for refreshment and transport. The Bill also included measures to deal with discrimination on these grounds by registered clubs against members or applicants for membership. It did not prohibit differential treatment which is done to promote equal opportunity for a particular group or which takes into account the special needs of a particular group.

74. The Supreme Court in a decision of 16 May 1997 found that the Employment Equality Bill was unconstitutional on three specific grounds. The first related to disability. The Court noted that the requirement for employers to make specified arrangements for a disabled person could impose significant costs on employers, particularly small employers, and that these provisions in the Bill constituted an unjust attack on property rights. Two other sections

dealing with vicarious liability and the provision of evidence by certificate were also found to be unconstitutional. The Government has redrafted the Employment Equality Bill to comply with the Supreme Court judgement and it will then be reintroduced in the Oireachtas for enactment.

75. The Supreme Court found that the Equal Status Bill 1997 was unconstitutional because it contained two provisions identical to aspects of the Employment Equality Bill, which the Court had already found unconstitutional. In the case of the Equal Status Bill, however, the Court did not consider the Bill as a whole and it was therefore necessary to obtain extensive legal advice before proceeding with the development of a revised bill. Revised legislation is now being developed on the same general lines as that found to be unconstitutional, but amended to meet the Supreme Court's requirements.

76. Once this legislation has been enacted the Irish Government will then be in a position to ratify the International Convention on the Elimination of All Forms of Racial Discrimination.

The Commission on the Status of People with Disabilities

77. The Commission on the Status of People with Disabilities was launched in 1993 to advise the Government on practical measures necessary to ensure that people with a disability can enjoy their rights to the full.

78. The Report of the Commission on the Status of People with Disabilities, entitled "A Strategy for Equality", was published on 18 November 1996. The report is an historic event in the lives of people with disabilities in Ireland and marks a turning point in the recognition of their rights as full and equal citizens. It impacts on a range of policy issues which are the responsibility of many government departments and agencies. Its main recommendations include:

The establishment of a Disability Support Service as a focal point for information, advice, support and advocacy for people with disabilities;

The nomination of the Department of Justice, Equality and Law Reform 3/ as the department with prime responsibility for monitoring the implementation of policy for people with disabilities;

The establishment of an authority to monitor the impact of public policy on people with disabilities;

The introduction of a disability pension to provide support for people with disabilities who are incapable of full-time work;

The guarantee that the State must provide sufficient resources to ensure that people with disabilities from pre-school age to adulthood have an education appropriate to their needs.

79. The Government has established an Interdepartmental Task Force to draw up a plan of action on the rights of people with disabilities, based on the report.

80. The Government has also established a Monitoring Committee to oversee the implementation of the Commission's recommendations. This Committee is comprised of representatives of organizations representing people with disabilities and their families and carers, as well as service providers, social partners and government departments.

The Irish Council of People with Disabilities

81. The interim Irish Council of People with Disabilities was launched on 11 March 1997. The Council is the major national body of people with disabilities in Ireland. It is comprised, in the main, of people with disabilities and also has representatives of parents and organizations of people with disabilities. It is intended that a permanent Council will be in place by 1999.

Sex Discrimination

82. Discrimination on the ground of gender is dealt with under article 3.

The Travelling Community

83. As outlined in the first report, Travellers in Ireland have the same civil and political rights as other citizens under the Constitution. The Government of Ireland pursues a policy to ensure as far as possible respect for their social and economic rights, a policy which was outlined in detail in Ireland's first report under the International Covenant on Economic, Social and Cultural Rights. To this end the Government established a Task Force on the Travelling Community in June 1993, to advise and report on the needs of Travellers and on government policy generally in relation to the Travelling Community, in a range of areas such as accommodation, health, equality, education and training.

84. The Task Force presented its Report and Recommendations on 20 July 1995, and in 1996, the Government's response was announced. This clearly defines departmental responsibilities in relation to Travellers and how best to ensure their equality in practical terms. A Monitoring Committee comprising government departments and other relevant interests has been established to oversee implementation of the report of the Task Force (see article 27 for more details).

85. As regards discrimination against Travellers by private individuals, the law in relation to incitement to hatred covers incitement to hatred against Travellers. The question of whether further protection for Travellers' rights is required is kept under review.

Non-nationals

86. While there are very few Irish laws that treat non-nationals differently from citizens, some discriminatory provisions do exist in Irish law. These pertain, for the most part, to political life, requirements for jury service, ownership of land, Irish-registered ships and aircraft, as well as conditions which must be satisfied by an individual wishing to become an officer in the Defence Forces.

87. With regard to the rights of non-nationals to choose a residence, section 45 of the Land Act, 1965 relating to the purchase of land by non-nationals does not apply to land under five acres and consequently it is submitted that the Act does not restrict the right of non-nationals to choose a residence.

## Article 3

EQUALITY MECHANISMS IN PLACE IN IRELAND

### Department of Justice, Equality and Law Reform

88. On 12 January 1993, a Cabinet minister was appointed as first-ever Minister for Equality and Law Reform. He had responsibility for seeing that equality became a reality through institutional, administrative and legal reform. The Minister also had a monitoring and coordinating role in relation to government policies insofar as they affect the status of women. As a result a system has now been implemented whereby all proposals coming to Government are routinely examined to assess their impact on women.

89. In March 1993 the Government set itself the objective of achieving gender balance in direct appointments to State Boards, with a target of 40 per cent female membership. While nominating bodies have been requested to comply with the Government's targets, in many cases the levels have yet to be reached. Pressure is being maintained and appointing bodies are reminded when making nominations, particularly when more than one candidate is being appointed, that they should make every endeavour to comply with the standard set by the Government. As on 31 March 1998 women constituted 35 per cent of ministerial/government nominees, and 28 per cent of total membership.

90. Following a review of the existing employment equality legislation, namely the Anti-Discrimination (Pay) Act, 1974 and Employment Equality Act, 1977, options for enhancement of the legislation were identified and resulted in the drafting and publication of the Employment Equality Bill, 1996 on 3 July 1996 (which was subsequently declared unconstitutional - see paragraphs 72-76). The legislation was designed to prohibit discrimination in employment on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Travelling Community. The Unfair Dismissals (Amendment) Act, 1993 extended the categories of explicit protection from unfair dismissal to include age, sexual orientation and membership of the Travelling Community.

### Gender-proofing government policies

91. In recent years there has been a general recognition that policy initiatives proposed by Government need to be gender proofed, i.e. assessed for the differential effect they have on women and men. This is because a policy initiative which in itself seems neutral as between men and women may not be so in practice because it is based on structures and situations where women are under-represented or exist primarily as dependents. Gender-proofing is intended to overcome the potential for indirect discrimination and to contribute towards an integrated equal opportunities policy.

Interpretation Act, 1937

92. The Interpretation Act, 1937 has been amended by the Interpretation (Amendment) Act, 1993 to provide for the use of the feminine gender in legislation and the legislation governing registrations of births, deaths and marriages is being reviewed.

National Women's Council of Ireland

93. The National Women's Council of Ireland, formerly the Council for the Status of Women, was founded in 1973 to monitor implementation of the recommendations of the first national Commission on the Status of Women. It is an umbrella body which groups together approximately 150 NGOs representative of women's interests and concerns. It is recognized by Government as the body which puts forward women's concerns and perspectives. It receives almost all its core funding from the Government as a positive action measure. It is completely independent of Government on policy issues, answerable only to its own elected executive committee and members. In addition to its developmental role it is recognized as an informed and constructive critic of policy initiatives and its leaders enjoy ready access to senior politicians and policy makers.

94. Membership is open to all women's organizations, or organizations which have a sizeable female membership, which have been in existence for at least a year prior to applying for membership.

Commission on the Status of Women

95. The second (National) Commission on the Status of Women was established by the Government on 1 November 1990, with the following terms of reference:

(a) To review the implementation of recommendations made by the first Commission on the Status of Women as set out in that Commission's report to the Minister for Finance in December 1972;

(b) To consider and make recommendations on the means, administrative and legislative, by which women will be able to participate on equal terms and conditions with men in economic, social, political and cultural life and, to this end, to consider the efficacy and feasibility of positive action measures;

(c) In the context of (b) above, to pay special attention to the needs of women in the home;

(d) To establish the estimated costs of all recommendations made; and

(e) To report to the Government within a period of 18 months from the date of its establishment.

96. The Commission's final report, which proposed a major programme of reform, was presented to Government in January 1993.

97. The report emphasizes that, in order for women to achieve equality, there must be power-sharing and partnership at the domestic as well as macro level. While the report's 210 recommendations do not have legal effect they drew a favourable response across the political spectrum and the recommendations will provide an impetus for many legal and administrative reforms.

98. A Monitoring Committee was established to oversee the implementation of the recommendations of the second Commission, comprising representatives from women's organizations, government departments and social partners. This Committee published two progress reports, in March 1994 and 1996, respectively. A new Gender Equality Monitoring Committee was recently established to pursue implementation of the Commission's recommendations and the Platform for Action agreed at the Fourth World Conference on Women.

Convention on the Elimination of All Forms of Discrimination against Women

99. Ireland acceded to the Convention on 22 December 1985 and submitted its first report in 1987. In April 1997, the Department of Equality and Law Reform published Ireland's second and third combined reports. The report charts developments over the last 10 years, in all aspects of life in Ireland, to achieve equality for women. It has been published for dissemination nationally.

The Oireachtas Joint Committee on Justice, Equality and Women's Rights

100. The Committee on Women's Rights, whose membership was drawn from both Houses of the Oireachtas, was first established in 1983 and Women's Rights Joint Committees were established in successive Dáils from 1983 to 1997. The function of that Committee is now being discharged by the Joint Committee on Justice, Equality and Women's Rights which was constituted following the formation of the new Government in July 1997. The current provision in respect of women's rights is part of the wider brief of the present Committee and the relevant provisions in the Committee's orders of reference state that the Committee is to consider:

(a) Such public affairs administered by the Department of Justice, Equality and Law Reform and the Department of Defence as it may select, including bodies under the aegis of those Departments in respect of government policy;

(b) Such matters of policy for which the Ministers in charge of those Departments are officially responsible as it may select;

(c) the strategy statement laid before each House of the Oireachtas by the Ministers in charge of those Departments pursuant to section 5 (2) of the Public Service Management Act, 1997, and shall be authorized for the purposes of section 10 of that Act;

(d) Such matters relating to women's rights generally, as it may select, and in this regard the Joint Committee shall be free to consider areas relating to any government department; and

(e) Such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas, and shall report thereon to both Houses of the Oireachtas.

The Employment Equality Agency

101. The Employment Equality Act, 1977 - which makes it unlawful to discriminate on the grounds of sex or marital status in relation to recruitment for employment, conditions of employment, training or in the matter of opportunities for promotion - also provided for the establishment of an Employment Equality Agency (EEA). The EEA provides an advisory and information service on equality legislation, represents individuals, where possible, in cases arising under that legislation and promotes good practices in the workplace.

102. Under the Employment Equality Bill, 1997 it is proposed that the remit of the EEA should be extended and that the Agency be reconstituted as the Equality Authority. The remit of the new Authority will encompass each of the nine categories covered by the Bill.

National Economic and Social Forum

103. The National Economic and Social Forum (NESF), established in June 1993, represents a new concept in participation in public affairs in Ireland. It is a consultative body which brings together members of the Oireachtas and their social partners (i.e. trade unions, employers and farming organizations), representatives of women's organizations, the unemployed, disadvantaged and other groups who traditionally have been outside the consultative process. It aims to establish consensus on social and economic issues with a major focus on measures to tackle unemployment. The Forum is chaired by a woman, appointed by the Government, and women make up approximately 51 per cent of the total membership. Of the Forum's 49 members, 3 are representatives of the National Women's Council of Ireland (see NWCI above).

Non-Nationals' Law

104. In law relating to non-nationals generally there are no distinctions which affect the equal entitlement of men and women to the enjoyment of all the rights set out in the Covenant. The requirement that a male non-national married to an Irish female need register as an alien (article 11 (C) (I) of the Aliens Order 1946: S.R. & O. No. 395 of 1946) is not applicable to a female in a corresponding position but this registration requirement does not affect in any way the equal enjoyment of the Covenant's rights by men and women.

105. The law and practice relating to Irish citizenship conforms in all respects with the terms of article 3. The Irish Nationality and Citizenship Act, 1986 removed the distinction which existed between the legislative provisions which applied to women and to men with regard to post-nuptial citizenship. Prior to the introduction of the 1986 Act such citizenship could only be granted where women married men who were Irish citizens other than by means of naturalization (section 8 of the 1956 Irish Nationality and Citizenship Act). A man, who married an Irish citizen would have had to seek

a Certificate of Naturalization under section 16 of that Act. Section 3 of the 1986 Act now provides for the grant of post-nuptial citizenship to both men and women subject to conditions which apply equally to both sexes.

## Article 4

106. Article 28.3.3 of the Constitution, the text of which is reproduced in the introduction to this report (para. 18) provides that the two Houses of the Oireachtas may resolve that, in time of war (which includes a time when an armed conflict is taking place in which the State is not a participant), armed conflict or armed rebellion, a state of national emergency exists affecting the vital interests of the State.

107. In accordance with that article, the Houses of the Oireachtas on 1 September 1976 resolved that "arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State".

### State of Emergency and Emergency Powers Act, 1976

108. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 611) requested the State to critically examine, inter alia, the need for the then existing state of emergency and the need for the Emergency Powers Act, 1976.

109. The national emergency declared to exist by resolutions passed by both Houses of the Oireachtas on 1 September 1976 pursuant to article 28.3.3 of the Constitution was ended by virtue of resolutions introduced by the Government and passed by both Houses of the Oireachtas on 7 and 16 February 1995 respectively, against the backdrop of the ending of campaigns of violence by the Provisional IRA and the organizations under the umbrella of the Combined Loyalist Military Command in August and October 1994 respectively. The Secretary-General of the United Nations was informed of the termination of the state of emergency, as required under paragraph 3 of this article.

110. The legal consequences of ending the emergency were that the Emergency Powers Act, 1976, enacted immediately following the declaration of a national emergency in 1976, automatically expired in accordance with the provisions of section 3 of that Act. In addition, section 15 of the Criminal Law Act, 1976 (which empowered members of the Defence Forces to arrest and search in certain defined circumstances when acting in aid of the civil power) ceased to have effect.

## Article 5

111. The provisions of the Constitution and legislation in the area of criminal and public law are designed to prevent activities aimed at the destruction of any of the rights and freedoms provided for in the Covenant.

## Article 6

### Right to life

112. The provisions of paragraph 1 of Article 6 on the right to life are similar to those in articles 40.3.2 and 3 of the Constitution which provide as follows:

> "2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life . . . of every citizen.
>
> "3. The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

### Use of force

113. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 612) emphasized the importance of the issuing of rules and guidelines on, inter alia, the use of firearms, and ensuring the strict enforcement thereof by law enforcement officials. Clear instructions on the use of restraint and force by members of the Garda Síochána in the exercise of their duties are contained in the Garda Code, the current version of which consists of three volumes produced between 1994 and 1996. The Code sets out the practices and procedures to be adopted by police officers in order to provide a lawful and effective policing service. Every officer in the Force has been issued with a personal copy of the Code, which is retained by him/her during service, and all officers are directed to adhere strictly to the instructions contained therein.

114. The Garda Síochána is an unarmed Force and only a small minority of members engaged in special duties are allowed to carry firearms. Comprehensive instructions on the use of firearms by members on duty are contained in the Garda Code. No officer may bear a firearm on duty unless it can be demonstrated that (s)he has been adequately trained and is proficient in the use of firearms. The officer must also demonstrate that (s)he is sufficiently familiar with the regulations governing the use and care of firearms to perform this duty safely.

115. For the use of force (including force by arms) to be lawfully justified, it must be reasonable and necessary in order to defend oneself, or another, against attack; to defend property; to effect a lawful arrest or to prevent the commission of a grave crime. The degree of force to be used is limited by the necessity of the occasion and the use of unnecessary force is a crime. The test is a subjective one and necessary force is construed as that which the subject honestly believed to be necessary.

116. In order for the discharge of a firearm by a police officer on duty to be justified in any particular case, it must be shown that the intention of the officer was to achieve a legal purpose as outlined above and that all other means of achieving that purpose had been exhausted. In all

circumstances where a firearm is discharged by an officer the safety of the innocent bystander and the public is of paramount importance. Every possible precaution is taken by the officer concerned to avoid unintentional injury.

117. The regulations governing the use of firearms by the Gardaí are set out in the Garda Code 25.42. These provide for the following:-

> "(1) A firearm will not be issued to any member of the Force unless the issuing member is satisfied that the member to whom it has been issued has received training in the use of the firearm in question. No member should carry a firearm unless proficient and has experience in the use of the firearm in question. Whenever a member of the Force is required to carry firearms on duty, the member should do so only when wearing plain clothes. Members should not carry firearms when in uniform.
>
> "(2) Firearms are issued to members primarily as weapons of defence to repel felonious attacks on:
>
> (a) Members to whom issued or members in their company;
>
> (b) Members of the public; and,
>
> (c) Property of individuals or of the public generally.
>
> "(3) Subject to the limitations indicated below, firearms may also be used to effect the arrest or re-arrest of felons.
>
> "(4) In order that the discharge of firearms may be justified in any particular case, it must be shown that the intention of the member firing was to achieve a legal purpose and that all other means of achieving this purpose had been exhausted before firing.
>
> "(5) In self defence, or in defence of members of the public under special protection, the discharge of firearms will be justified if an assailant is seen by a member pointing or discharging a gun at the member or at a member of the public, or if by reason of injuries received by felonious assault, and reasonable grounds are adduced for believing the member or other members of the public to be in peril of life and if no other weapon is at hand to make use of, or if the member is rendered incapable of making use of any such weapon by the previous violence received. The discharge of firearms would not be justified merely on the suspicion that a person was in possession of firearms.
>
> "(6) To justify the discharge of firearms for the protection of property, it must be shown that a felonious attack on the property was made, such as arson, or looting on a large scale and that all other means available to repel the attack had been tried and exhausted without success.
>
> "(7) The use of firearms to effect the arrest of a felon will similarly be justified only if all other means have been exhausted. These would include active pursuit and the summoning of assistance of other members.

If an unarmed burglar escapes arrest from the custody of a member merely by reason of being the more active, the discharge of firearms would not be justified. But if a burglar whose arrest had been effected attacks the member with such violence and inflicts such injuries as lead to believe that the member's life is in danger and that the escape of the felon cannot otherwise be prevented, then the discharge of firearms would be justified.

"(8) Members may produce firearms so as to have them immediately available for use in case of justifiable necessity. For example, when approaching persons who are believed to be carrying arms, the production of arms would be justified. In these cases, however, members, if in plain clothes, should announce their identity by saying 'Guards on Duty' and call on the suspected persons to surrender or submit to search. Otherwise it is conceivable that a law abiding citizen might resist on the assumption of being attacked by offenders.

"(9) All searches of premises for firearms must be authorized by the prior issue of a search order in duplicate under Section 24 of the Firearms Acts and regulations made thereunder.

"(10) Whenever firearms are used in order to effect an arrest, it must be shown that there was lawful authority for the intended arrest.

"(11) The indiscriminate firing of shots over the heads of disorderly crowds or of unarmed criminals in flight in the hope that they will desist from some unlawful act or surrender cannot be justified. Firing over the heads of a riotous mob may encourage the mob to further acts of violence, when those taking part in the riot observe that the firing is not effective.

In this connection, it is also to be borne in mind that, having regard to the effective range of modern weapons, innocent persons at a great distance may be injured or killed by shots.

"(12) Before a member is first issued with a firearm for use on duty, the foregoing instructions will be read over and explained by the member in charge or Station House Officer.

"(13) When acting as a sea fisheries protection officer in accordance with the terms of paragraph (h) of Sub-section (1) of Section 223 of the Fisheries Acts, 1959/78, a member may cause a gun to be fired as a signal, after which sea-fishing boat may be fired at or into.

"(14) Whenever firearms have been produced or used on duty a report should be made of the circumstances when the members concerned return to their stations."

118. The question of firearms training in the Garda Síochána was examined in 1990 and the training and standard of proficiencies required for each firearm used by the Force was set out at that time. In addition, Garda management continue to review the training of members of the Force in the use of firearms as the need arises. Gardaí undergo a basic firearms training

course as part of their overall training while at the Garda College. They are trained in the use and handling of firearms and must attain a specific standard of proficiency.

119. It is understood from the Garda authorities that each Garda Division has a panel of members authorized to carry firearms on duty. Selected members are trained in the use and handling of specialist weapons. These members are required to attain a specified level of proficiency and are also required to attend refresher firearms training courses on a regular basis.

120. Authorization to members of the Garda Síochána to carry firearms on duty is renewable annually and can be revoked at any time, should circumstances so dictate.

Landmines

121. In accordance with the provisions of the Explosives (Land Mines) Order, 1996 (S.I. No. 175 of 1996) dated 12 June 1996 no person shall manufacture, keep, import into the State, convey or sell any landmine. This Order came into operation on 13 June 1996.

Death penalty

122. There is no provision in Irish law for the death penalty. The penalty was abolished by the Criminal Justice Act, 1990 for all offences which remained punishable by death under 1964 legislation. The death penalty was last used in 1954.

Crime of genocide

123. Ireland is a party to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 and the obligation in article 6 (3) of the Covenant not to derogate in any way from the obligations assumed under the Convention presents no difficulties.

Right to life of the unborn

124. All developments which occurred prior to 1992 and which relate to the right to life of the unborn in this country are outlined in considerable detail in Ireland's first periodic report (Part II, paras. 44-51).

125. In 1992 a referendum was held in which the Irish people voted on three issues: travel, information and the substantive issue of abortion. Consequently the Constitution was amended to provide that article 40.3.3 should not limit freedom to travel between the Irish State and another State, or freedom to obtain or make available, in the Irish State, subject to such conditions as might be laid down by law, information relating to services lawfully available in another State. Following the insertion of these amendments to the Constitution, the Oireachtas enacted The Regulation of Information (Services Outside State for Termination of Pregnancies) Bill 1995. Before the Bill was signed into law it was referred to the Supreme Court for a decision on whether it, or any of its provisions, was unconstitutional.

126. The Supreme Court upheld the constitutionality of the Bill. It reaffirmed its decision in the case of Attorney-General v. X and others, (1992) IR 1 & (1992) IR 16: that where there is a real and substantial risk to the life, as distinct from the health, of the mother, an abortion may be carried out. 4/ This position was found to be unaltered by either the thirteenth or fourteenth amendment to the Constitution (dealing with the right to travel and the provision of information, respectively) or by the Bill before the Court. The Court also outlined the position of pregnant women (not in the category of X) with regard to abortion information. It found that, while a doctor must not advocate or promote the termination of her pregnancy, (s)he may give information on abortion services lawfully available outside the State provided that it is given in the context of full information, advice and counselling on *all* courses of action open to her. The final decision, on the course of action to be taken, is left to the woman. A doctor cannot make an appointment with an abortion service on behalf of a woman but once it is made (s)he may communicate in the normal way with another doctor with regard to the condition of his/her patient, provided that such communication does not in any way advocate or promote the termination of pregnancy.

127. The Government decided on 2 December 1997 to establish a Cabinet Committee to oversee the work of an Interdepartmental Working Group with the following Terms of Reference:

> "Having regard to:
>
> "Section 58 of the Offences against the Person Act, 1861;
>
> "Section 59 of the Offences against the Person Act, 1861;
>
> "Article 40.3.3 of Bunreacht na hÉireann;
>
> "The decision of the Supreme Court on 5 March 1992 in the Attorney-General v. X and Others [1992] 1 IR 1;
>
> "Protocol No. 17 to the Maastricht Treaty on European Union signed in February 1992 and the Solemn Declaration of 1 May 1992 on that protocol;
>
> "The decision of the people in the Referendum of 25 November 1992 to reject the proposed Twelfth Amendment of the Constitution;
>
> "The decision of the High Court on 28 November 1997 in A & B v. Eastern Health Board, Judge Mary Fahy, C and the Attorney General (Notice Party);
>
> "and having considered the constitutional, legal, medical, moral, social and ethical issues which arise regarding abortion and having invited views from interested parties on these issues, to prepare a Green Paper on the options available in the matter."

128. The Cabinet Committee is being chaired by Brian Cowen, T.D., Minister for Health and Children and also comprises Ms. Mary O'Rourke, T.D, Minister for Public Enterprise; Mr. John O'Donoghue, T.D., Minister for Justice, Equality and Law Reform; Ms. Liz O'Donnell, T.D., Minister of State at the

Department of Foreign Affairs; and Mr. David Byrne S.C., Attorney-General. The Interdepartmental Working Group has members from the Department of Health and Children; Justice, Equality and Law Reform; Foreign Affairs and the Office of the Attorney-General. Newspaper advertisements were placed in January and February 1998, inviting interested members of the public, professional or voluntary organizations and any other parties who wish to do so to make written submissions on the issues referred to in the terms of reference of the Working Group. A substantial number of submissions were received in response to these advertisements. The Taoiseach has indicated that the Green Paper will be referred to the All-Party Committee on the Constitution for consideration and that any final decision on the abortion issue will be put to the people in a referendum. Work on the drafting of the Green Paper is proceeding and it is hoped to have it completed in mid-1998.

## Article 7

129. Torture and cruel, inhuman or degrading treatment are contrary to the personal rights guaranteed to persons by article 40.3 of the Constitution (The State (C) v. Frawley, (1976) I.R. 365).

130. The Garda Síochána (Complaints) Act, 1986 provides procedures for dealing with complaints from the public about treatment by Gardaí. An independent Garda Complaints Board operates under the legislation to investigate and adjudicate upon all complaints. The Board can impose disciplinary action including a fine, reduction in rank or dismissal of a garda.

131. Since the submission of Ireland's last report under this Covenant, the authorized staffing of this Board has been increased by 55 per cent which has resulted in speedier processing, and a reduction in the number of outstanding complaints, despite an increase in the overall number received. The Board's 1995 Annual Report, the most recent one available, puts the number of outstanding complaints at the end of 1995 at 475, as compared with 591 for 1994. A copy of the 1995 Report is enclosed.

### Treatment of suspects in Garda custody

132. The treatment of persons in Garda custody is governed by the Criminal Justice Act, 1984 (Treatment of Persons in Garda Custody) Regulations, 1987. These regulations are designed to safeguard persons in custody from improper behaviour by members of the Garda Síochána.

133. The regulations (copy attached) include provision, required by the 1984 Act, for the assignment of a member of the Garda Síochána, of appropriate rank, in each Garda station, responsible for ensuring that the treatment of persons in custody are in accordance with the regulations.

134. That responsibility includes such matters as ensuring that persons in custody are informed of their rights and arranging for a solicitor to be contacted, or some other person to be notified, where a person in custody has decided to exercise these entitlements. The member in charge also has overall

responsibility for the accuracy and completeness of custody records which provide a full and detailed account of any period during which persons are in custody in the Garda station.

135. Similarly, persons who attend at Garda stations voluntarily for the purpose of being interviewed or making a statement in relation to a criminal offence, but who are not in custody, are treated with no less consideration than those detained in Garda custody. For example, they are offered refreshments at appropriate times and permitted to consult privately with a solicitor or communicate with anyone outside of the station.

136. Tuition and instruction with regard to all provisions of the custody regulations are studied in depth with particular emphasis on respect for the dignity and rights of the person in Garda custody. Student/probationer Gardaí are examinable in relation to these Regulations.

137. On a practical level, student/probationer Gardaí are given experience of the treatment of persons in custody as part of their Phase II and Phase IV "on the job" training at selected Garda stations under the supervision of a training sergeant. In Phase II their role is strictly observational, while in Phase IV they are given a practical opportunity to apply their knowledge of the Regulations. The instruction given to student Gardaí is regularly revised to take account of legislative and procedural changes.

Recording of Garda interviews with persons detained in Garda stations

138. The provision of additional safeguards for persons detained in Garda stations are currently under consideration in the context of ongoing pilot trials involving the audio and audio-video recording of Garda interviews with detainees.

139. Over the last two years the operation of these pilot trials has been carried out in four Garda stations on a voluntary basis. However, as a result of a recommendation made by the Steering Committee overseeing the operation of the trials, the Minister for Justice made regulations (S.I. No. 74 of 1997 - copy attached) under section 27 of the Criminal Justice Act, 1984 to make the recording of interviews mandatory for persons detained at the four Garda stations under section 4 of the Criminal Justice Act, 1984; section 30 of the Offences against the State Act, 1939 and section 2 of the Criminal Justice (Drug Trafficking) Act, 1996. The regulations took effect on 1 March 1997.

140. Depending on the results of these pilot trials, consideration will be given to extending electronic recording nationwide.

Corporal punishment

141. Legislation to provide for the abolition of statutes dealing with persons being sentenced to corporal punishment for certain offences, viz. the Criminal Law Act 1997, was enacted in April 1997 and came into effect in July 1997. The absolute prohibition on the use of corporal punishment in all State schools is provided for in a Department of Education circular issued to all schools in 1982.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

142. Certain changes to domestic law are necessary before Ireland will be in a position to ratify the Convention. It is hoped to introduce the necessary legislation in the course of 1998.

Clinical trials

143. The Control of Clinical Trials Act, 1987, provides statutory protection, including a requirement of informed consent, for persons, whether patients or healthy volunteers, who participate in clinical trials involving the administration of preparations or substances which may have pharmacological or harmful effects.

Article 8

144. There is a requirement for all convicted prisoners in Irish prisons to work within the prisons. A prisoner may be excused on medical advice or for attendance at educational courses. The work available includes carpentry, crafts, upholstery, leatherwork, engraving, shoe-making, mat-making, bag-making, glove-making, tailoring, cleaning, woodyard, and store work.

Article 9

Police inquiries

145. Prior to the late 1970s the Gardaí operated on the basis that they could ask a suspect for a crime to accompany them to a Garda station to "help them with their inquiries". This practice has since been found by the courts to be unlawful. In The People (Director of Public Prosecutions) v. Shaw (1982) IR 1, Walsh J. said that "if there exists a practice of arresting persons for the purpose of assisting the police in their inquiries it is unlawful. In such circumstances the phrase is no more than a euphemism for false imprisonment".

146. The Criminal Justice Act, 1984 sets out the conditions under which a person who has been arrested for an offence may be detained for the purposes of the proper investigation of the offence. There are a number of safeguards in place to protect individuals against police officers acting ultra vires. The Commissioner of the Garda Síochána is answerable to the Minister for Justice for the way in which the Force is run. Police actions are, of course, subject to the Constitution, civil and criminal law and, in particular, the Garda Disciplinary Regulations and Garda Síochána (Complaints) Act, 1986. As mentioned in relation to article 7 (paras. 130-131) the Garda Complaints Board was set up by the legislature as an independent statutory agency to investigate and adjudicate on complaints made by members of the public against the Garda Síochána.

147. Gardaí receive full academic and practical instruction on all matters pertaining to the above-mentioned legislation and its provisions. The importance of the complaints legislation is emphasized particularly in regard

to its dual role in providing an independent forum for dealing with complaints from the public, whilst ensuring that the operational efficiency of the Force is not restricted.

148. The Criminal Justice (Drug Trafficking) Act, 1996 allows detention of up to seven days in suspected drug trafficking cases. The Act, however, contains a number of safeguards, including the need to bring a person before a court at intervals after the first 48 hours of detention have elapsed. The court may authorize a further period of detention up to 72 hours and thereafter a final period of detention up to 48 hours. In each case the detained person must be brought before the court. Before authorizing further periods of detention, the court must be satisfied that the continued detention is necessary for the proper investigation of the suspected offence and that the investigation is being conducted diligently and expeditiously. The Act also states that certain sections (including those dealing with detention and rearrest) will cease to operate after 12 months from the date of commencement unless both Houses of the Oireachtas resolve that the sections will continue in operation. Furthermore, before such a resolution may be passed, the Minister must lay before each House a report on the operation of the relevant sections, covering the period up to 21 days before the moving of the resolution. A copy of the report by the Minister on the operation of sections 2, 3, 4, 5 and 6 of the Act during the period 9 September 1996 to 27 June 1997, pursuant to section 11 (3) of that Act is enclosed.

149. The Act also contains a provision which affects the right to silence insofar as it allows a court to draw inferences from the failure of an accused person to mention, while being questioned by the Gardaí, any matter which (s)he subsequently relies on in his or her defence which could have reasonably been expected to have been mentioned at that time. Such failure may only be used as corroboration of any evidence in relation to which the failure is material and a person cannot be convicted of an offence solely on an inference drawn from such failure.

Right to Bail

150. Following a Supreme Court decision of 1966 bail could only be refused, under the Constitution, where there was a real danger that an accused would not attend court for trial, or would interfere with witnesses or evidence. A proposal to amend the Constitution to allow provision to be made, by law, for the refusal of bail because of the danger that an accused would commit a serious offence if allowed bail was carried in a referendum held on 28 November 1996. The bill to amend the Constitution was signed on 12 December, 1996.

151. The Bail Act, 1997 was subsequently enacted with two main objectives. The first is to give effect to the amendment to the Constitution, allowing a court to refuse bail to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person. The second is to introduce other important changes to tighten up on bail laws generally. These include provisions relating to the payment into court of cash or equivalent securities as part of bail; attaching conditions to bail, including conditions relating to good behaviour of the accused while on bail; allowing forfeiture of bail money where the conditions

are breached; and strengthening the provisions of the Criminal Justice Act, 1984 requiring consecutive sentences to be imposed where an offence is committed on bail. The Act will be brought into force in the context of the availability of additional custodial accommodation.

Review of findings of insanity in criminal proceedings

152. Legislation to reform the law in this area is currently being prepared. As an interim measure, the Minister for Justice, Equality and Law Reform may appoint a three-member Advisory Committee as and when applications are made to make recommendations on whether persons found guilty but insane, and who have applied for release, are suffering from any mental disorder warranting their continued detention in the public and private interest (including whether that person would be a potential danger to any member of the public if released). In this regard, consideration shall be given to any relevant information, material or submissions as may be tendered to, or come to the notice of, the Committee, including any information, material or submissions tendered by or on behalf of the applicant. To date a Committee has been appointed in respect of a number of applications and their advice has been presented to the Minister for his or her consideration in each case.

Review of detention under mental treatment legislation

153. The Department of Health and Children is currently reviewing all aspects of mental health legislation. The White Paper - A New Mental Health Act - published in August 1995, set out the Government's proposals relating to the content of new mental health legislation. New legislation relating to the detention of mentally ill patients will bring Irish legislation into conformity with the European Convention on Human Rights. It will provide a modern framework for the care and treatment of patients with mental illness who refuse, or who are incapable of seeking, treatment or protection in their own interest, or in the interests of others. In July 1996 the Government authorized the drafting of a new Mental Health Bill along the lines of the proposals outlined in the White Paper, with some amendments following consultation with interested parties. The Bill is currently being drafted in the Office of the Attorney-General and it is hoped to enact the new legislation in 1998. The new legislation will reinforce the critical role of primary care services in the care of the mentally ill.

Article 10

154. At the time of ratification, Ireland made the following reservation to article 10 (2) of the Covenant:

> "Ireland accepts the principles referred to in paragraph 2 of article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively."

Segregation of accused persons

155. Construction of a facility for remand prisoners has commenced with completion due late in 1998 (see also paras. 162 and 170). This will accommodate 400 inmates and will allow the proper segregation of such inmates from convicted persons in accordance with article 10.2 of the Covenant. The Wheatfield Remand facility should be ready for use in early 1999.

Prisoner population

156. Ireland now has a current prisoner population of approximately 2,400 of which an estimated 2.5 per cent are female. The number of prisoners at any one time is about 66 per 100,000 of the general population. While the level of imprisonment has grown over the past decade, the present rate per 100,000 of the general population remains consistent with the average for Western European States.

157. The total number of prison staff in service on 30 June 1997 was 2,460 which gives one of the highest staff-to-prisoner ratios in the world. Internal and external security is maintained by unarmed prison staff, except in the case of one institution (Portlaoise Prison) where, because of the perceived security risk of some prisoners, back-up perimeter security is provided by police, assisted by armed military personnel.

158. Female prisoners are still accommodated in separate parts of two closed institutions. Construction of a new, stand-alone closed women's prison at Mountjoy, which will be built to the highest modern standards, commenced in May 1997. Completion is scheduled for late 1998. There are no current plans to provide an open institution for women prisoners.

159. Legislation governing the operation of the prison system comprises a variety of Prison Acts dating from the nineteenth century, specifically the Visiting Committees Act, 1925, the Criminal Justice Act, 1960 and various Statutory Rules and Regulations, the most important of which are the Rules for the Government of Prisons, 1947. The fundamental and guiding principles laid down in the Standard Minimum Rules for the Treatment of Prisoners are generally in force in Irish prisons. New Prison Rules, which are still at the draft stage, will be largely based on these principles. (The Draft New Prison Rules are enclosed. Also enclosed are the 1996 Visiting Committees' Annual Reports to the Minister for Justice, Equality and Law Reform.)

160. The Irish Government is strongly committed to the principle that all persons deprived of their liberty shall be treated with humanity and dignity. In its response to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (published in December 1995), the Government stated that "Those in custody must at all times be provided with the means necessary to secure the protection of their safety and rights". The Government also drew attention to the fact that various legal and other instruments, as well as administrative arrangements necessary to foster respect for the rights of those in custody, have been put in place over the years. It further acknowledged that these instruments and arrangements need to be kept constantly under review and strengthened where necessary. The Irish Government also produced a follow-up report in response

to the report of the Committee on the Prevention of Torture on its visit to Ireland in 1993, published in September 1996. (All three reports are attached.)

161. The basic training given to prison officers places significant emphasis on the human rights of prisoners. They are taught that deprivation of liberty is a most sensitive and far-reaching power available to the State and should at all times be subject to the rule of law and exercised with respect for the dignity and basic rights to which everyone is entitled as a human being. The training provided places significant emphasis on the European Convention on Human Rights, the Standard Minimum Rules and the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment.

Accommodation and location

162. Plans are currently being implemented to provide in excess of 1,000 additional closed prison places by the end of 1998. The new places will be located in four new prisons together with a new wing in an existing prison. Four of the five projects are under construction with the fifth project at the planning and design stage. These projects will include 64 places for female prisoners in a separate modern prison and 400 places for male remand prisoners (see para. 171 below). This accommodation is being built to the highest standards possible.

Sanitation

163. In all the open and semi-open institutions, prisoners have ready access to toilets at all times. Two of the older institutions (St. Patrick's Institution and Arbour Hill Prison) have had in-cell sanitation installed, and these facilities are currently being installed in the Separation Unit at Mountjoy Prison. Refurbishment of the other closed institutions will include installation of in-cell sanitation as standard. The newer institutions (Wheatfield - opened in 1989; Health Care Unit, Mountjoy Prison - opened in 1993; Curragh Prison - opened in 1996) all had in-cell sanitation installed at the outset. Castlerea Main Prison (which was brought into use from May 1998), the two new prisons now under construction (Women's and Wheatfield Remand), and the new wing being added to an existing prison (D Wing Limerick Prison) also have in-cell sanitation facilities incorporated. The new proposed 400-place secure prison at Portlaoise will be a modern prison with full in-cell sanitation facilities. The contract for the new Midlands Prison at Portlaoise was signed in May 1998 and construction is due to be completed in a period of 15 months from signing.

Medical Service

164. To ensure that offenders' medical needs are being met at all times, 24-hour medical orderly cover is provided in all closed prisons. Additional training for new and existing orderlies is being arranged to improve their qualifications and skills. It is planned to introduce qualified nurses into prisons generally as soon as practical. Prisoners have access to all necessary medical treatment and if this cannot be provided within the prison system, the patient will be referred for treatment in the community. Some nurses are currently employed on a drugs treatment programme at Mountjoy.

165. A special accommodation unit has been built in the main prison complex at Mountjoy for those suffering from AIDS and other infectious diseases. It is specially equipped to enable medical attention to be given according to the special needs of prisoners.

Drugs Rehabilitation/Treatment

166. A 14-day detoxification programme was introduced by the medical officer at Mountjoy Prison in 1996. This programme, which is an expansion of what was previously available, is aimed at weaning addicts off drugs by means of gradually reducing dosages of substitutes such as methadone. Detoxification programmes generally are of a limited duration and are comparable to those available elsewhere in the community. Such programmes are available in all closed prisons subject to the advice of the medical officer in each institution.

167. A new Drug Treatment Unit has been in operation since July 1996 at the prison's Health Care Unit. This Unit provides for humane detoxification therapy and provides methadone for prisoners who are incarcerated while undergoing a recognized methadone maintenance programme in the community. This Unit is the first of its kind in a prison environment in this State and is modelled on similar hospital-based units in the community. As of 12 March 1998, approximately 120 prisoners had been admitted to the Drug Treatment Unit and early indications are very positive. Arrangements are in place to provide effective monitoring and supervision of offenders following their discharge from the Unit either into the wider prison system (in many cases the Drug-Free Unit) or following their release into the community, by means of facilities such as the Coolmine Therapeutic Community.

168. A Drug-Free Unit has been operative in the Training Unit since June 1996 and accommodates 96 prisoners. This facility enables prison authorities to accommodate those prisoners who do not have a background of drug abuse in a totally drug-free and secure environment within the prison. It also provides a sympathetic, yet closely monitored setting in which prisoners who have come to terms with their addiction and who have achieved stable drug-free status can serve out their sentences in an environment free from the temptations and risks associated with the general prison population. The regime in the Unit will provide inmates with valuable opportunities in the form of a wide range of gainful work and training-related activities in order to assist in the rehabilitation process.

169. Prisoners in both the Mountjoy Treatment Facility and the Drug-Free Unit are closely monitored by regular and random urine testing.

Remand Assessment Centre - Cloverhill Prison

170. As referred to above (paras. 155 and 162), the provision of a discrete 400-place remand/assessment centre for holding remand prisoners and/or assessing sentenced prisoners was approved in the context of the prison building programme. Court facilities will be provided on the same site. This facility will allow for the identification and classification of addicts on committal. Their drugs status will be taken into account when considering

matters relevant to individual prisoners' sentences, such as where they should be placed within the prison system. Due regard will be paid, for example, to preventing access to illegal drugs and/or providing the appropriate treatment/detoxification, etc. Construction has begun and it is hoped that it will be completed in 1998.

Psychological Services

171. The Department of Justice, Equality and Law Reform now has a complement of six psychologists who work in the prisons. All are mainly involved in clinical work. If the need arises, a psychologist may be contracted from outside the service to carry out a specific research project. The psychological service is coordinating a recently developed treatment programme for sex offenders.

172. Psychologists are also involved with the selection, induction, training (which refers to induction training of recruits) and developmental training of prison officers (which refers to post-entry training of staff). Post-incident care is also provided for prison officers who have been involved in traumatic incidents in the course of their work.

Deaths in Custody

173. Any death while in custody is subject to a public inquiry in the form of an inquest. Under the Coroner's Act, 1962, the coroner is an independent officer specifically appointed to investigate such deaths. (S)he may sit with or without a jury of independent citizens, and may summon such witnesses, be they eyewitnesses or expert witnesses, as (s)he wishes to enable him or her or the jury to come to a verdict in the case. It is the function of the inquest to enquire not merely into the causes of the death in the medical sense, but to investigate all circumstances relating to the death. It is a matter for each coroner to decide when an inquest into a death which has occurred in his or her particular area should be held.

174. An elaborate strategy is in place for the prevention of suicides in prisons but unless there is to be a total denial of all personal privacy to all prisoners at all times, the possibility of suicides in custody cannot be precluded any more than it can be precluded in the wider community. Of the 57 Suicide Prevention Recommendations contained in the Report of the Advisory Group on Prison Deaths (published in August 1991) 52 have been implemented or are in the course of implementation (as of April 1997). These include the following:

- 24-hour medical orderly cover in the closed institutions (at a cost of £500,000);

- An increase in the number of clinical psychologists - from three to six initially - including a female psychologist to cover the Women's Prison;

Installation of cell call systems with which distressed prisoners may summon help;

Introduction of a service by the Samaritans in all institutions and availability of cordless telephones to enable prisoners to contact the Samaritans on dedicated telephone lines;

Special training courses for prison staff;

The establishment of a Suicide Awareness Group in each institution to review suicide attempts and ensure that appropriate action is taken, at local level;

Training and resuscitation equipment;

Employment of a pharmacist;

Revision of the Rules of the Government of Prisons, 1947;

Improvements in general practitioner (GP) services;

Provision of in-cell sanitation (a seven-year programme) (see also paragraph 163 on sanitation).

175. The remaining recommendations include the provision of a Committal Assessment Centre, a new female prison designed to meet the specific needs of women prisoners (and with a level of services appropriate to them) and the establishment of a unit to cater for psychiatrically disturbed, violent prisoners. These recommendations are more long-term in nature, a fact which was acknowledged by the Advisory Group, and will be implemented in the context of the overall development of the prison system. (See paragraph 158 re the new women's prison.)

176. The Minister for Justice, Equality and Law Reform has also established a National Steering Group, liaising with the local Suicide Awareness Groups in the institutions, under the chairmanship of a Senior Prison Governor. The Committee includes in its membership some of the most experienced representatives of prison management, staff and medical practitioners who are very involved in prisons work. The Group has met on a number of occasions to date and is currently reviewing, and overseeing, the implementation of recommendations made by the Advisory Group on Prison Deaths, published in 1991. The Group will also provide a forum for collating reports by the local Suicide Awareness Groups within the institutions and disseminating significant findings/lessons learned through the prison system. Trends in prison suicide in other countries and their prevention will also be monitored.

177. The circumstances of each death in custody are examined by the Suicide Awareness Group in each institution. These examinations fully cover the

background and circumstances of each death. Their objective is to identify, where possible, measures which might be taken to contribute to the prevention of tragic deaths of this nature.

178. A total of 27 persons have died in prison custody since 1 January 1993 (as of 3 June 1998). Of the 27 deaths, 8 are believed to be attributable to drug overdoses, 13 are believed to have been self-inflicted and 6 were due to natural causes. Inquests have so far been held on 21 of these cases, of which 11 were found to be self-inflicted. In no case has an inquest attributed a prison death to ill-treatment in custody.

Letters

179. Persons serving sentences are generally allowed to send out two letters per week. Extra letters to family or solicitors may be allowed on request. A prisoner awaiting trial may send out as many letters as (s)he likes. There is no limit on the number of letters which may be received.

180. Prisoners' correspondence, however, is censored, especially in the "closed" institutions. This is necessitated by security considerations.

181. The law in relation to the censorship of mail in prisons is set out under article 63 of the Rules for the Government of Prisons, 1947. At present, all incoming/outgoing mail to an offender, with the exception of mail to/from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), the European Commission of Human Rights and the Samaritans, is opened and perfunctorily read to see if the letter contains any contraband (money or drugs), or anything else that might compromise the security of the institution or those who are imprisoned in it or working in it. Arrangements are also in train to make an exception for correspondence between prisoners and the Human Rights Committee. The Minister is currently reviewing the Rules for the Government of Prisons and may, as part of this review, revise the protocol in relation to the present censorship of mail.

Temporary release

182. The number of prisoners on temporary release can vary between 400 and 570 on any one day.

Segregation

183. As outlined previously (paras. 155, 162, 170) the current building programme includes the provision of 400 new spaces in a separate facility, now under construction, for male remand prisoners.

Juvenile offenders

184. Young offenders have the opportunity to follow the normal school curriculum and take Department of Education and university examinations like other young people. Juveniles serving sentences who have special educational needs are also catered for. Vocational training is provided and some pursue certificated vocational training in a range of industrial skills.

185. Narcotics awareness programmes for young inmates are run by the education units, in conjunction with the Probation and Welfare Service.

186. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 606), emphasized that the segregation of juvenile offenders is required under the Covenant. In December 1996 the Government published the Children's Bill, 1996 which deals predominantly with juvenile justice matters. Among the proposals contained in the Bill is that no child (i.e. persons under 18) will be sentenced to imprisonment. It proposes that children's detention schools be used for those under 16, for which the Department of Education will have ultimate responsibility, and that the Minister for Justice, Equality and Law Reform will provide detention facilities for 16 and 17-year-old offenders where they will be kept separate from older prisoners (see article 24, paragraphs 319-320 for more details). The Bill, which had passed its second stage, fell when the last Dáil was dissolved but was reintroduced by the new Government and is awaiting Committee stage before the Dáil.

Convention on the Transfer of Sentenced Persons

187. The Council of Europe Convention on the Transfer of Sentenced Persons was ratified following the enactment of the Transfer of Sentenced Persons Act, 1995. The Convention came into force as between Ireland and other parties to the Convention on 1 November 1995. With effect from that date it became possible to commence processing requests for transfers to and from prison institutions in Ireland. The Transfer of Sentenced Persons Act, 1995, provides a mechanism whereby non-nationals serving sentences in Ireland may apply to serve the remainder of their sentences in their own countries and similarly, Irish persons who are imprisoned overseas may apply to serve the remainder of their sentences in Ireland.

188. Under the terms of the Convention, the two States involved in processing a transfer request are required to exchange information about the sentenced person. This information includes a copy of the judgement and the law on which it is based, sentence administration particulars and medical/social reports. These must be obtained from a number of different sources. Owing to the complexity of the documentation required to effect a transfer, the process of information exchange is not one that can be completed quickly.

189. To date (28 May 1998) a total of 118 applications for transfer into this jurisdiction have been formally transmitted to the Irish authorities for consideration since the Act came into force in Ireland in November 1995. Such transmission is a formal requirement under the Convention/Act and does not

constitute approval for the transfer by the relevant authorities. Of the cases which have already been transmitted, 26 cases have been resolved without transfer, e.g. withdrawn, released, etc., and 5 have been refused. A total of 41 persons have now transferred to this jurisdiction. The remaining applications are being actively processed by the Department of Justice, Equality and Law Reform.

190. Seventy-one applications for transfer from this jurisdiction to another State have been received to date. A total of 18 persons have transferred out of the State and 40 cases have been resolved without transfer, e.g withdrawn, released, refused, etc. The remaining applications are under consideration.

191. A copy of the Minister's 1997 annual reports on the operation of the Act is enclosed.

## Article 11

192. In its comments on Ireland's first report (A/48/40, para. 606), the Human Rights Committee expressed concern over the use of imprisonment for failure to pay a debt.

193. Article 11 prohibits imprisonment "merely on the ground of inability to fulfil a contractual obligation". Such imprisonment has not been a feature of the Irish legal system since debtors' prisons were abolished in the nineteenth century. Irish law does not authorize the imprisonment of a person for mere failure to pay a civil debt. A person may be committed to prison, however, for failure to comply with a court order to make certain payments in discharge of a debt. An order for imprisonment may not be made, however, if the debtor shows to the satisfaction of the courts that his failure to pay was due neither to his wilful refusal nor culpable neglect (Enforcement of Court Orders Acts, 1926 and 1940).

194. It is for the courts to interpret the phrases "wilful refusal" and "culpable neglect". In practice, for example, wilful refusal could arise where the debtor is in dispute with the creditor over the validity of a debt, despite the fact that the court has ruled on the issue. In such circumstances the person may be purposefully refusing to comply with the court order. Culpable neglect could be expected to arise where the court is satisfied that complying with the court order was within the means of the debtor, but insufficient efforts were made by him or her to do so, in circumstances where blame could be attributed to the debtor.

195. Statistics relating to the number of applications for committal orders for non-payment of debt dealt with by the District Court in the year ending 31 July are as follows:

| Year | No. of applications for committal orders |
|---|---|
| July 1993 | 8 658 |
| July 1994 | 9 059 |
| July 1995 | 9 919 |
| July 1996 | 11 747 |

196. However, at any one time the number of persons actually in custody for non-payment of debts is less than 1 per cent of the prison population, i.e. about 25 people. This is due to the fact that many debtors make payment either on committal or shortly afterwards, so that the average amount of time spent in prison by individual debtors is quite short. It should be noted that the Minister for Justice, Equality and Law Reform has no power to release debtors until their debt is paid, or they have purged their contempt of court.

197. Legislative proposals to end imprisonment where practicable for civil debt and inability to pay fines are currently being prepared in the Department of Justice, Equality and Law Reform.

## Article 12

### General

198. As outlined in Ireland's first report (para. 138), both the right to travel and freedom of movement within the State have been identified by the Supreme Court as personal rights guaranteed by the Constitution. The referendum of 1992 (see paras. 124-128) clarified the position in relation to the right to travel to seek an abortion.

### Non-nationals

199. Non-nationals' freedom of movement is subject to the State's rules regarding public security, public order and public health. As outlined in Ireland's first report (paras. 140-141), under the Aliens Act 1935, the Minister for Justice, Equality and Law Reform has a range of powers in relation to non-nationals which he or she may exercise by creating statutory orders.

## Article 13

### Deportation of non-nationals

200. Subject to the restrictions imposed by the Aliens Act, 1935 (No. 14 of 1935), the Minister for Justice, Equality and Law Reform may, if he deems

it conducive to the public good to do so, make an order (referred to as a deportation order) requiring a non-EEA (European Economic Area) national to leave and remain thereafter out of the State. The special position of EEA nationals is as set out in paragraph 146 of Ireland's first report.

201. A non-EEA national who is ordinarily resident in Ireland, and has been so resident for a period of not less than five years, and is employed in Ireland or engaged in business or in the practice of a profession in Ireland may not be deported unless:

(a) Such a person has served, or is serving a term of penal servitude or of imprisonment imposed by a court; or

(b) The deportation of such person has been recommended by a court; or

(c) Three months notice in writing of deportation has been given by the Minister.

202. In the exercise of his discretion, the Minister for Justice, Equality and Law Reform has regard to the principles of national and constitutional justice, to act in a fair and proper manner and in accordance with fair procedures. A reasonable opportunity is afforded to persons who are required to leave the State to appeal that decision and to show why a deportation order should not be made.

Article 14

203. At the time of ratification Ireland made the following reservations with regard to article 14 of the Covenant:

> "Ireland reserves the right to have minor offences against military law dealt with summarily in accordance with current procedures, which may not, in all respects, conform to the requirements of Article 14 of the Covenant.
>
> "Ireland makes the reservation that the provision of compensation for the miscarriage of Justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provisions."

204. The enactment of the Criminal Procedure Act, 1993 has meant that Ireland is now in a position to withdraw the second reservation pertaining to compensation (see paragraph 219 for more details).

The Special Criminal Court

205. The Human Rights Committee requested, in its comments on Ireland's first periodic report (A/48/40, para. 611), that the State should, inter alia, critically examine the need for the Special Criminal Court. Such a review has

recently been carried out by the Government who decided that, in the light of the prevailing security and crime situation, there was a continuing need for the Court. The Government are also committed to keeping the question of the need for the Court under regular review.

206. Copies of the judgements of the Supreme Court and the High Court in the case of Kavanagh v. Ireland (1996) 1 I.R. 321 and (1996) 1 I.L.R.M. 133 which involved a challenge to some of the key provisions underpinning the existence of the operation of the Special Criminal Court are attached. Details of the outcome of cases determined by the Special Criminal Court in the period 1992-1996 are as follows:

OUTCOME OF CASES HEARD IN THE SPECIAL CRIMINAL COURT 1992-96

| Year | No. of trials | Total No. of persons indicted | No. of persons pleading guilty | No. of persons convicted | No. of persons acquitted | No. of nolle prosequi entered |
|---|---|---|---|---|---|---|
| 1992 | 17 | 20 | 10 | 6 | 4 | Nil |
| 1993 | 18 | 21 | 13 | 6 | 1 | 1 |
| 1994 | 15 | 29 | 7 | 13 | 3 | 6 |
| 1995 | 10 | 12 | 5 | 4 | 1 | 2 |
| 1996 | 9 | 14 | 4 | 8 | - | 2 |

207. The Special Rapporteur of the Sub-Commission on human rights and states of emergency was notified of the intention to conduct the review referred to above, and of the ending of the national emergency and its implications, by Ireland's Permanent Mission to the United Nations in Geneva. These developments were reflected in his eighth annual report dated 26 June 1995.

Courthouse Refurbishment Programme

208. A major courts refurbishment programme began in 1993/94 when substantial funding from the Central Exchequer became available.

209. Priority has been given to courthouses in major towns where staff are based. The programme provides for facilities to be upgraded to modern-day standards and to include such provisions as consultation-waiting areas and a room for victim-support personnel as required.

210. In the Dublin area, additional court accommodation to facilitate a recent increase in the number of judges appointed has been provided.

211. There are approximately 260 court venues throughout the country. Accordingly, it will take a number of years to fully extend and implement this building and refurbishment programme to all of the courthouses.

212. On 19 November 1996 the Government agreed to set up a Courts Service on a statutory basis as an independent and permanent body. It was also agreed that the necessary legislation would be drafted as a matter of urgency and priority. This Service will assume the responsibility for the administration of the courts which, it is intended, will include the management/development of court accommodation. It is intended that the Courts Service will be empowered to establish and manage a seven-year building and modernization programme of court premises.

Judicial Training

213. Under the Constitution the judiciary are guaranteed independence in the exercise of their functions, subject only to the law. This excludes any action by the Executive which could be interpreted as direct interference in the exercise of those functions, including imposing a training or briefing programme on them.

214. The system of recruitment to all levels of the judiciary aims to introduce trained and experienced legal practitioners into the field. On appointment judges can generally be expected to have a wide knowledge of the law and its application. However, it is acknowledged that this training and expertise is not always sufficient. In recognition of this, the Minister for Justice, Equality and Law Reform has always assisted with initiatives which the judiciary have brought forward in the area of training, and funds have always been made available to judges at all levels to enable them to attend training seminars and conferences both at home and abroad.

215. Recent legislation has put this practice on a statutory footing. The Courts and Court Officers Act, 1995 (enclosed) provides that the Minister for Justice, Equality and Law Reform may, with the consent of the Minister for Finance, provide funds for the training and education of judges. This Act also provides that a person wishing to be considered for judicial appointment must give his or her agreement that, if appointed, they will undertake such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court to which that person is appointed. The Chief Justice has recently established the Judicial Studies Institute to oversee judicial training and to ensure that funds which are made available for training are used as effectively as possible.

Criminal Legal Aid Scheme

216. There have been no structural changes to the operation of the Criminal Legal Aid Scheme in Ireland over the last number of years. The Scheme operates under the terms of the Criminal Justice (Legal Aid Act), 1962 and the Regulations made thereunder. The cost of the Criminal Legal Aid Scheme has increased from £2.69 million in 1990 to £8 million in 1995 and £8.25 million in 1996. In light of this increase, the then Minister for Justice sought and

received the approval of the Government to establish a committee to review the operation of the Scheme and to make recommendations as to the manner in which it might be improved so that it operates effectively and provides value for money. The Review Committee has now been established and is currently carrying out the review. To this end the Committee has invited and received submissions from interested groups on issues relevant to their terms of reference.

Civil Legal Aid

217. The Civil Legal Aid Act, 1995 came into effect on 11 October 1996 replacing the non-legislative scheme of Civil Legal Aid and Advice which had been in operation since 1979. Legal services under the Act are provided by solicitors in the employ of the Legal Aid Board, who operate from a nationwide network of law centres. Under the Act the services of lawyers are made available to persons of modest means at little or no cost, subject to a means test. The members are appointed to the Board by the Minister for Justice, Equality and Law Reform, each for a period of five years. The Government, conscious of the need to make extra resources available to facilitate the provision of civil legal aid to needy applicants, has more than doubled the Exchequer funding to the Legal Aid Board over the last five years to a total of £8,319,000 in 1997.

218. The Legal Aid Board now operates a total of 30 full-time legal centres, compared with the 16 centres which were in operation in 1993.

Compensation following reversal of conviction

219. The Criminal Procedure Act, 1993 provides specific statutory provision for payment of compensation by the State to, or in respect of, persons convicted as a result of a miscarriage of justice, in accordance with article 14, paragraph 6. This has enabled the Irish Government to take steps to withdraw a reservation that the provision of compensation may be by administrative means rather than by law. It is hoped that the reservation will be lifted by the time the second report is submitted.

## Article 15

Retrospective criminal sanction - Sentencing

220. This principle is encapsulated in article 15.5 of the Constitution of Ireland which provides as follows:

> "The Oireachtas shall not declare acts to be infringements of the law which were not so at the date of their commission."

## Article 16

221. All persons are recognized as persons before the law in Ireland's domestic jurisdiction.

## Article 17

### Privacy

222. Article 40.3.1 of the Constitution provides that:

> "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen."

### Correspondence and communications

223. Subject to certain exceptions, the Postal and Telecommunications Services Act, 1983 sets out a general prohibition on the interception of postal packets and telecommunications messages. One of the exceptions involved is interception carried out on foot of authorizations granted by the Minister for Justice, Equality and Law Reform for the purpose of criminal investigation or security of the State. The Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 placed on a statutory basis the conditions under which the Minister may give an authorization. Provision is also made in that Act:

(a) For a designated judge of the High Court (currently the President of the High Court) to keep the operation of the Act under review, to ascertain whether its provisions are being complied with and to report to the Taoiseach at intervals of not more than 12 months. In his four reports to date (attached), each of which was laid before the Oireachtas in accordance with the Act, the designated judge has expressed himself to be satisfied that the provisions of the Act have been complied with; and

(b) For a person, who believes that his communications have been improperly intercepted, to complain to a Complaints Referee (currently a judge of the Circuit Court) who has the power to give the appropriate redress to the complainant if (s)he considers the complaint to be justified.

### Honour and reputation

224. Article 40.3.2 of the Constitution provides that:

> "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

225. A person whose honour or reputation is unfairly damaged may, in particular, seek the protection of the criminal and civil laws on libel.

Equivalent Article of the European Convention on Human Rights

226. In 1988 Ireland was found by the European Court of Human Rights to be in breach of article 8 of the above Convention which, in similar terms to article 17 of the Covenant, states that "everyone has the right to respect for his private and family life, his home and his correspondence". The breach was in respect of statutory offences in relation to certain sexual practices which, in effect, made consensual homosexual acts between males illegal. Legislation (the Criminal Law (Sexual Offences) Act, 1993) has since been enacted to give effect to the ruling of the European Court, and decriminalizes homosexual activity for those of 17 years and older.

## Article 18

Freedom of religion in educational establishments

227. The Department of Education, in accordance with article 44.4 of the Constitution which prohibits any State discrimination between schools under the management of different religious denominations, makes no distinction when allocating State aid to schools at primary and secondary levels. The schools receiving support from the State would be predominantly of the various Christian denominations, and a majority of those would be Catholic schools. However, the State supports in exactly the same way multi-denominational schools, a number of Jewish schools and also a recently established Muslim school in Dublin.

228. The Government have recently published an Education Bill, which is currently being considered by the Oireachtas. The Bill, when enacted, will be the first legislation of general application to address issues relating to the organization of education at first and second levels in the State. Its provisions are a combination of structural reforms of the education system and a balancing of the interests of the partners in education - parents, patrons, students, teachers and the State. In accordance with the Irish Constitution's provisions in relation to education, the Bill recognizes the right of schools to maintain their own distinctive "characteristic spirit". This is defined as "the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school". The Bill makes provision to respect the rights of parents to send their children to a school of their choice. Indeed, aside from resource implications, parents have absolute discretion as to where they send their children to school, subject only to regard for the rights of others. In this context, the Bill specifically contains an objective "to promote the rights of patrons to send their children to a school of the parents' choice having regard to the rights of patrons and the effective and efficient use of resources". Finally, the Bill, in addition to providing that the Minister shall determine a curriculum to be followed in all recognized schools, provides a specific exemption for any student to withdraw from any

subject which is contrary to the conscience of the parent of the student or, in the case of a student who has reached 18 years of age, of the student.

Employment Equality Bill, 1996

229. As outlined in article 2 (para. 72), the Employment Equality Bill, 1996 dealt with, inter alia, discrimination on grounds of religion. Section 37 of the Bill provided, inter alia, that a religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person if it gives more favourable treatment, on the religious ground, to an employee or prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution or it takes action which is reasonably necessary to prevent an employee from undermining the religious ethos of the institution.

230. As noted above (paras. 72-76), the Bill was referred in its entirety by the President to the Supreme Court on 3 April 1997 under article 26 of the Constitution.

231. Following the judgement of the Supreme Court, which found that certain provisions of the Employment Equality Bill, 1996 were unconstitutional, it was decided by the Government to prepare a revised Employment Equality Bill taking into account the various points raised by the Supreme Court in its judgement.

232. The Employment Equality Bill, 1997 was subsequently published and is currently under consideration by the Oireachtas. It is expected to be enacted within a matter of weeks. If and when it is signed into law it will give Ireland one of the most modern equality codes in Europe.

Judicial declaration

233. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 607), stated that the constitutional requirement that judges take a religious oath excludes some people from holding office. The requirement for judges to make a declaration is enshrined in article 34.5 of the Irish Constitution as follows:

> "1. Every person appointed a judge under this Constitution shall make and subscribe the following declaration:
>
> 'In the presence of Almighty God I, ....., do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.'

"2. This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other judges of the Supreme Court, the judges of the High Court and the judges of every other Court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court.

"3. The declaration shall be made and subscribed by every judge before entering upon his duties as such judge, and in any case not later than ten days after the date of his appointment or such later date as may be determined by the President.

"4. Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office."

234. It must be pointed out, however, that there have been many appointments made to the judiciary from different religious denominations and that, to date, no judicial appointee has ever raised any difficulty in relation to the constitutional declaration.

235. Any change to the declaration would require an amendment to the Constitution.

The Constitution Review Group

236. The Constitution Review Group, of which the Attorney-General was a member, was established by the Government of Ireland on 27 April 1995. Its purpose was to review the Constitution and, in the light of this review, to establish those areas where constitutional change might be desirable or necessary, with a view to assisting the work of the All-Party Committee on the Constitution which was established subsequently by the Oireachtas. The Constitution Review Group, in its Report dated 23 May 1996, considered the matter of the declaration upon appointment for judges provided for in article 34.5 of the Irish Constitution. At page 179 of the report the Group states:

"Article 34.5 provides that every Person appointed a judge under the Constitution shall make and subscribe the requisite declaration in open court. The United Nations Human Rights Committee in its final report under Article 40 of the International Covenant on Civil and Political Rights drew attention to the religious references in what was described by some members of that committee as 'a religious oath on entering office' (see O'Flaherty and Heffernan, International Covenant on Civil and Political Rights: International Human Rights in Ireland, Dublin 1995 at p. 74).

"Article 34.5.1. uses the word 'declaration' rather than 'oath'. The requirement to make the declaration in its present form could be thought to discriminate against people who do not believe in God or who believe in more than one God. The Review Group considers that the article should be amended so that it contains one declaration to be taken by all

judges without the present religious references or two declarations, one with religious references and one without. A majority of the Review Group favours one declaration only without the religious references. It does not appear desirable that a judge be required openly to choose between two forms of declaration thereby indicating his or her religious beliefs. The daily exercise of the judicial function requires that a judge's impartiality should not be put in doubt by a public declaration of personal values. The same consideration does not apply to the President, in regard to whom the Review Group suggests a choice of alternatives (see chapter 3 - 'The President', Issue 8).

"Recommendation

"(a) Amend the declaration in Article 34.5.1. by deleting the first and last phrases referring to God.

"(b) Change the reference to 'man' to 'person'."

237. The report was published and presented to the All-Party Oireachtas Committee on the Constitution.

The All-Party Oireachtas Committee on the Constitution 1996-1997

238. The Committee was established on 3 July 1996 with the following terms of reference:

"In order to provide focus to the place and relevance to the Constitution and to establish those areas where Constitutional change may be desirable or necessary, the All-Party Committee will undertake a full review of the Constitution. In undertaking this review, the All-Party Committee will have regard to the following:

"(a) the Report of the Constitution Review Group;

"(b) certain constitutional matters i.e. articles 2 and 3, the Right to Bail, Cabinet Confidentiality and Votes for Emigrants which are the subject of separate consideration by the Government;

"(c) participation in the All-Party Committee would involve no obligation to support any recommendations which might be made, even if made unanimously;

"(d) members of the All-Party Committee, either as individuals or as Party representatives, would not be regarded as committed in any way to support such recommendations;

"(e) members of the All-Party shall keep their respective Party Leaders informed from time to time of the progress of the Committee's work;

"(f) none of the parties, in Government or Opposition, would be precluded from dealing with matters within the All-Party Committee's terms of reference while it is still sitting, and

"(g) whether there might be a single draft of non-controversial amendments to the Constitution to deal with technical matters "

239. The All-Party Committee is an informal one. Subject to the agreed terms of reference, it is a matter for the Committee to settle its own procedures.

240. The Committee has published two progress reports - First Progress Report on 23 April 1997 and Second Progress Report on 30 April 1997. Both of these reports are attached. The First Progress Report contains the strategy adopted by the Committee. Because there is no popular impetus behind the process of constitutional renewal, the Committee decided that it would not be possible to put forward to the people, with good prospects of success, a totally revised Constitution for approval in a single referendum. It therefore agreed that the best way to proceed was to draw up a programme of constitutional amendments to be implemented over a reasonable period, and has concluded that a comprehensive renewal of the Constitution could be achieved by a programme of approximately 50 proposals.

241. The Committee was reconstituted on 16 October 1997 after the formation of the new Dáil with similar terms of reference (term (b) above omitted, however). It published in June 1998, in association with the Policy Institute of Trinity College Dublin, "A New Electoral System for Ireland?" by Michael Laver.

## Article 19

242. The right to hold opinions and the right to freedom of expression are guaranteed by the Constitution in article 40.6.1.i. At the time of ratification Ireland made the following reservation with regard to article 19, paragraph 2:

"Ireland reserves the right to confer a monopoly on or require the licensing of broadcasting enterprises."

243. In 1993 responsibility for broadcasting policy transferred to the Minister for Arts, Culture and the Gaeltacht. 5/ Responsibility for radio frequency management matters and the technical licensing of transmitting stations remains with the Minister for Public Enterprise.

244. The Broadcasting Authority Acts, 1960-1993, provide for the establishment of Radio Telefís Éireann (RTÉ) as the national broadcaster and empowers the RTÉ Authority, inter alia, to provide national radio and television services. The RTÉ Authority has statutory autonomy in day-to-day programming matters subject to the Broadcasting Authority Acts. Section 17 of the Broadcasting Authority Act, 1960 requires RTÉ in its programming to be:

"responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland and have special regard for the elements which distinguish that culture and in particular for the Irish language".

245. The Radio and Television Act, 1988 established the Independent Radio and Television Commission (IRTC) to arrange for the provision of broadcasting services additional to those of RTÉ, including one national sound broadcasting service and one national television service. Subject to radio frequency availability and management, the IRTC has autonomy in the number of radio stations to be provided and the selection of operators.

246. The Government also decided to establish an Irish-language television service as a separate national channel to be known as Teilifís na Gaeilge. This new service commenced transmission on 31 October 1996. It is intended to establish a separate statutory entity to operate Teilifís na Gaeilge. Until such time as the necessary legislation can be put in place, RTÉ has been charged with the establishment, programming and initial operation of the service.

247. Under section 31 of the Broadcasting Authority Act, 1960 the Minister for Arts, Heritage, Gaeltacht and the Islands has the power to direct RTÉ to refrain from broadcasting matter, where (s)he is of the opinion that the broadcasting of a particular matter or matter of a particular class would be likely to promote, or incite to crime, or would tend to undermine the authority of the State. Any such order must be laid before the Houses of the Oireachtas who may annul it. The last Order made under this section lapsed in January 1994 and was not renewed. No new order is anticipated.

Censorship

248. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 613), suggested that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship of Publications Board.

249. Government policy in relation to censorship of both publications and films/videos is based on the acceptance of the principle by the vast majority of Irish people of the need to restrict, in the public interest, publications and films/videos which are indecent and obscene. In the case of both publications and films/videos, the machinery for censorship has been provided by the various Acts of the Oireachtas.

250. The power to censor publications is conferred on an independent censorship board. Decisions of the Censorship of Publications Board to ban publications may be appealed to the Censorship of Publications Appeal Board. This Board is also independent.

251. It is not open to the Minister for Justice, Equality and Law Reform or other members of the Executive to influence or to intervene in any way in decisions made either by the Censorship of Publications Board or the Censorship of Publications Appeal Board in relation to the censorship of publications.

252. The issue of freedom of expression generally was among the issues considered by the Constitution Review Group (see para. 236 and pp. 291-304 of the Group's report). Specific mention was made in the Constitution Review Group's report of the issue as to whether the publication of indecent matter should remain a constitutional offence prescribed by law. The Report stated:

> "The Review Group is aware that public standards and attitudes on the question of what constitutes indecency have changed in the last thirty years or so. Indeed, if the statutory controls were strictly applied, many books, periodicals and films which are now freely available and which do not excite public controversy would have to be banned. Of course, the Review Group is not suggesting that the Oireachtas should be powerless to deal with material which is grossly obscene or which depicts acts of gross violence or cruelty, but is of the opinion that the qualifying language of Article 10 (2) of the European Convention of Human Rights ... would vest the Oireachtas with sufficient powers to curb the publication or distribution of such material."

253. The Review Group therefore considered that the relevant part of article 40.6.1.i of the Constitution, which prescribes or requires the creation of the offence of publishing or uttering indecent matter, should be deleted. The Group's conclusions are currently being examined.

Freedom of Information Act, 1997

254. The Freedom of Information Act, 1997 came into operation on 21 April 1998. This enables members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies. Exemptions include matters relating to discussion at government meetings, material which could adversely affect defence, security, international relations, law enforcement, legal and parliamentary matters, and personal, commercial or confidential information. To facilitate this access the Act provides for the establishment of the Office of Information Commissioner, as well as an independent appeals procedure, whereby a right of appeal to the High Court will lie.

Abortion Information

255. In October 1992 the European Court of Human Rights ruled in Open Door Counselling Ltd. and Others (Series A, No. 346, (1993), EHRR 244) that Ireland was in breach of article 10 of the European Convention on Human Rights, which enshrines the right to freedom of expression. In November 1992 a referendum was held in which the Irish people voted on three issues, including the right to information. Consequently the Constitution was amended to provide,

inter alia, that article 40.3.3. should not limit the freedom to obtain or make available, in the Irish State, subject to such conditions as might be laid down by law, information relating to services lawfully available in another State. (See article 6, paragraphs 125-128, on the right to life of the unborn.)

256. The Regulation of Information Bill was enacted in May 1995 following the Supreme Court's confirmation of its constitutionality. The Court held that the Bill struck a fair balance between the constitutional rights of the mother and of the unborn. The Act has five objectives:

(a) To clarify the legal entitlements and obligations of persons or agencies who give abortion information;

(b) To ensure that any doctor or advice agency who provides abortion information to pregnant women does so only in the context of full counselling on all of the available options, without any advocacy or promotion of abortion;

(c) To prohibit such a doctor or advice agency from referring women to pregnancy termination services, but without interfering with the ethical obligation on a doctor or counsellor to ensure the safety of the patient;

(d) To ensure that abortion information made available to the general public (for example, in newspapers, books or broadcasts) is factual and does not advocate or promote abortion; and

(e) To prohibit the provision of abortion information by means of billboards, public notices or distributing unsolicited leaflets, so that abortion information will not be imposed on the public in a manner which will be offensive to some.

257. The Government's policy is to ensure that women who are worried about their pregnancies do not feel that their only option is to travel outside the State to seek an abortion without first obtaining sympathetic advice and counselling as well as whatever information they may need. In many cases, this may result in the continuation of a pregnancy which might otherwise have been terminated. Where this is not the case, the doctor or counsellor will be in a position to ensure the patient's safety by providing information on safe and reputable services, by providing the woman with any medical records or notes which are relevant to her care, and by having the woman return for any post-abortion treatment or counselling which may prove necessary.

## Article 20

258. The Prohibition of Incitement to Hatred Act, 1989 was passed to prohibit incitement on account of race, religion, nationality or sexual orientation. There have been no prosecutions under the Act since its introduction.

## Article 21

259. Article 40.6 ii of the Constitution guarantees the right of peaceful assembly subject to public order requirements. In accordance with this provision, electoral law provides that it is an offence for a person to act in a disorderly manner at a lawful public meeting held in connection with an election or referendum. It also prohibits obstruction of electors or canvassing in or near polling stations on polling day. Apart from these provisions, electoral law does not regulate peaceful assembly for electoral purposes.

260. The Constitution, in article 40, guarantees the right of citizens to assemble peaceably without arms; it also allows for provision to be made by law to prevent or control meetings in certain circumstances.

261. The law in relation to public order offences was updated in the Criminal Justice (Public Order) Act, 1994. The Act makes it an offence to engage in any unreasonable behaviour in a public place between certain hours, or at any time having been requested by a member of the Garda Síochána to desist, in circumstances likely to cause serious offence or annoyance to others. Other offences relate to engaging in threatening, abusive or insulting words or behaviour in a public place with intent to provoke a breach of the peace or whereby a breach of the peace may be caused. It also makes the distribution or display in a public place of threatening, abusive, insulting or obscene material an offence.

262. The most recent information regarding the enforcement of the Act shows that in 1996, proceedings were instituted in respect of 16,384 offences under the Act (in 1995 the equivalent figure was 10,209). These statistics are not compiled in such a manner as to indicate the activity persons were engaged in at the time of their arrest.

## Article 22

263. The law relating to trade unions in Ireland falls into two distinct phases: (a) statutes enacted, mainly between 1871 and 1906, to secure trade union freedom and remove trade unions and their activities from the operation of the law; and (b) statutes enacted since 1940 which have sought to introduce a measure of public regulation of trade unions. The Irish Constitution has had an important impact on industrial relations law and practice. A significant body of case law has developed around the constitutional guarantee of freedom of association, as it applies to the activities of trade unions. Ireland's current international obligations and constitutional provisions on freedom of association, as well as the majority of statutory laws affecting that freedom, are explained in detail in Ireland's first report (paragraphs 227-242). Additional information on statutory regulation and protection of the freedom of association is outlined below.

264. The principal statutes governing the activities of trade unions in Ireland are: the Trade Union Act, 1871; the Conspiracy and Protection of Property Act, 1875; the Trade Union Acts, 1941, 1971 and 1975; and the

Industrial Relations Act, 1990. The progress and developments made with the enactment of five of these six statutes were detailed in Ireland's first periodic report.

265. As regards the Industrial Relations Act, 1990, it represents the most significant development in industrial dispute law in Ireland since the Trade Disputes Act, 1906 (now repealed). The general purpose of the Act was to put in place an improved framework for the conduct of industrial relations and the resolution of disputes. The Act covers both trade union and industrial relations law. The system of immunities previously provided for in the 1906 Act has been maintained by the 1990 Act with some amendments. The 1990 Act limits the application of the immunities in certain circumstances (e.g. secondary picketing, "worker versus worker" disputes, one person disputes and situations where the outcome of a secret ballot is against industrial action). It also requires unions to have a provision in their rule books for the holding of secret ballots before engaging in or supporting a strike or any other form of industrial action. These changes had the support of both trade unions and employers.

## Article 23

266. The family is described in article 41.1.1. of the Constitution of Ireland as the "natural primary and fundamental unit group of society". Additionally, article 41.3.1. stipulates that "the State pledges itself to guard with special care the institution of Marriage on which the Family is founded and to protect it against attack". The Government in its Action Programme for the Millennium has given a commitment to protect the family through political, economic, social and other measures which will support the stability of the family. This new family focus is designed to make families central to policy-making.

### Oireachtas Joint Committee on Family, Community and Social Affairs

267. This Committee, established in 1997, examines and reports on the impact of social change and State policies on the family, in both its extended and nuclear forms. It pays particular attention to the protection and enhancement of the interests of children and the elderly, and measures which can be taken to support them. The terms of reference of the Committee are that it consider, inter alia:

(a) Such public affairs administered by the Department of Social, Community and Family Affairs as it may select, including bodies under the aegis of that Department in respect of government policy;

(b) Such matters of policy for which the Minister in charge of that Department is officially responsible as it may select;

(c) Such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas;

and report thereon to both Houses of the Oireachtas.

268. There is also a Joint Committee on Health and Children which was established in 1997. Included in the Committee's orders of reference are provisions to consider and report to both Houses of the Oireachtas on:

(a) Such public affairs administered by the Department of Health and Children as it may select, including bodies under the aegis of that Department in respect of government policy;

(b) Such matters of policy for which the Minister in charge of that Department is officially responsible as it may select.

Commission on the Family

269. The Commission on the Family was set up by the then Minister for Social Welfare in October 1995 with a mandate to examine the needs and priorities of the family in a rapidly changing social and economic environment and to make recommendations on how best to facilitate families in the support and development of their individual members.

270. Representatives from the medical, voluntary/NGO, and educational sectors are included in this Commission as are the four government departments with primary responsibility for social policy, i.e. Health and Children; Education; Justice, Equality and Law Reform; and Social, Community and Family Affairs.

271. The main findings of the Commission's final report (an executive summary of the report) were launched recently. The final report contains a comprehensive and in-depth analysis of the issues affecting families and wide-ranging recommendations across several policy areas.

272. The recommendations in the final report include:

The establishment of a national network of Family and Community Services Resource Centres;

A refocusing of the State social welfare services to provide a customized local service for families;

Prioritization of family support work at a preventive level;

A review of the present tax arrangements for married persons to provide more support for families with the most demanding caring

responsibilities, such as those looking after young children or a family member with a disability or for a family member who is older and dependent on family care;

That the proposed parental leave, to be introduced shortly, be paid;

The introduction of a national programme of information for parents;

Continued improvements in the various programmes to support lone parents' participation in the workforce, increased access to schemes and training programmes and direct advice and assistance in accessing employment, training and childcare;

Education strategies in relation to preventing teenage pregnancy and support programmes for those teenagers who become parents at a young age;

Increased funding for marriage counselling;

Payment of an Early Years Opportunity Subsidy (£20 per week per child) to enable children (if their parents so wish) to participate in pre-school services;

Increased investment in primary level education;

Improving the levels of pension payments and promoting pension coverage for the future;

Improvements in health care and community supports for older people and for carers and improved coordination in the delivery of these services.

273. Arising from the Government's commitment to a range of pro-family policies and in response to an interim report from the Commission on the Family, substantial additional resources amounting to £2.75 million were provided in the budget for 1998 for the development of family services in the Department of Social, Community and Family Affairs.

274. The additional resources included:

£700,000 for a network of Family and Community Services Resource Centres;

An extra £600,000 for marriage counselling services (bringing the total provision in 1998 to £1.5 million);

An extra £600,000 for the Family Mediation Service for the establishment of additional centres towards the development of a national service.

Support for families in the Irish Social Welfare System

275. The family unit, including single-parent families, is central to all Irish social welfare schemes. Due to the changing nature of families in present-day society, the social welfare system in Ireland is constantly reassessed and adapted to support the family. In the past, the main thrust of social welfare schemes was the provision of passive income support; this role is now being expanded with a view to providing more active support measures designed to enhance the capability of the family to become more self-sufficient. This applies, in particular, in the case of the unemployed and lone parents.

276. Within the general framework of the Irish social welfare system there are a number of specific schemes designed to provide income support to families. These include:

One-Parent Family Payment;

Widow's and Widower's Pensions;

Carer's allowance - a payment to carers on low incomes who live with and look after certain people who need full-time care and attention;

Child Benefit - a universal and non-means-tested scheme which is generally paid to the mother or primary carer;

The Family Income Support scheme which provides a payment to workers raising families on low earnings;

Maternity Benefit;

Health and Safety Benefit;

Adoptive Benefit;

Orphans Contributory Allowance and Non-contributory Pension.

277. Active support measures include Back to Work schemes which cater for unemployed and lone parents particularly; the part-time job incentive scheme, educational opportunities under the Vocational Training Opportunities Scheme and Third Level Allowance and schemes which provide income support while engaged in voluntary work. Additionally, there is a scheme of grants for Lone Parents Groups, which provides funding for initiatives to assist lone parents to return to work or take up second chance education opportunities. One in three school-going children benefit from Back to School Allowances. Families caring for a child with disabilities receive special income support services.

278. In addition to specific schemes designed to provide income support to families (see para. 276), social welfare payments are made up of three components: a personal rate and extra amounts in respect of qualified adult and child dependant(s).

279. In line with the Government's commitment in its Action Programme to making assistance for the family a priority, the Minister for Social, Community and Family Affairs recently launched a package of initiatives to support homemakers and carers. These initiatives include:

New arrangements whereby time spent looking after children up to 12 years of age, or providing full-time care to a relative in the home, will no longer be taken into account when calculating the yearly average contribution condition for the retirement and old age (contributory) pensions;

Additional 50 per cent payment of Carer's Allowance to people looking after more than one person;

Changes to the definition of full-time care to enable the Carer's Allowance to continue where the person being cared for is attending a recognized rehabilitative course or day-care centre.

Protection of children in the event of a breakdown or dissolution of marriage

280. Social welfare legislation has been enacted to ensure that no spouse or child will be disadvantaged in terms of their social welfare entitlements as a result of their legal status being changed from married or separated to divorced. The provisions came into effect after the enactment of divorce legislation in April 1997.

281. The Social Welfare (No. 2) Act, 1995 extends entitlement to a Widow's or Widower's (Contributory) Pension to divorced people on the death of their former spouse, provided that they have not remarried or are not cohabiting with someone as man and wife. Consequently, on the death of an insured person who was married more than once, their spouse or former spouse may qualify for a Widow's or Widower's (Contributory) Pension on either their own insurance record or that of the deceased. The Act also provides that a divorced woman who fails to qualify for a Widow's (Contributory) Pension on the death of her former husband may qualify for Widow's (Non-contributory) Pension. The provision of a similar payment to men in a similar situation will be introduced shortly.

282. The legislation also provides that:

A divorced parent be recognized in Social Welfare legislation as a lone parent for the purposes of the One-Parent Family Payment;

Family Income Supplement may be paid to a divorced and employed person on low income who is supporting his or her former spouse and children.

In certain circumstances a divorced spouse may be regarded as a qualified adult for the purposes of paying an increase in benefits/pensions under the social protection system.

283. In addition, separate provision is made in Part IX of the Social Welfare (Consolidation) Act, 1993 for the "liability to maintain family". Under the legislation, persons who fail to support their spouses in the event of marriage breakdown are obliged to contribute to the cost of any One-Parent Family Payment or Supplementary Allowance which, as a result, is paid to their families. Liable relatives pay either by way of regular direct contribution to the Department of Social, Community and Family Affairs, or through family law court orders which are transferred to the Department. The Department of Social, Community and Family Affairs has the option of recourse to legal proceedings under the normal civil debt process where the liable relative fails to comply with the legislation.

Development of family law code including removal of constitutional prohibition on divorce

284. With regard to article 23, the family law code has been extensively developed in recent years including the introduction of legislation providing for the dissolution of marriage. The following outlines the background and legislative provisions developed since the first periodic report.

285. At the time of ratification, Ireland made the following reservation with regard to article 23, paragraph 4, of the Covenant:

"Ireland accepts the obligation of paragraph 4 of article 23 on the understanding that the provision does not imply any rights to obtain a dissolution of marriage."

286. On 24 November 1995, the Government held a referendum in which the people were asked to agree to the deletion of the existing prohibition on divorce which was contained in article 41.3.2. of the Constitution of Ireland. Article 41.3.2. provided that:

"2. No law shall be enacted providing for the grant of a dissolution of marriage."

287. The referendum proposal, which was contained in the Fifteenth Amendment to the Constitution (No. 2) Bill 1995 provided for a new article 41.3.2, reads as follows:

"A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that:

"i. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years;

"ii. there is no reasonable prospect of a reconciliation between the spouses;

"iii. such provision as the court considers proper, having regard to the circumstances, exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law;

"iv. any further conditions prescribed by law are complied with."

288. In the referendum, a majority of those who voted favoured the proposed amendment. Following a legal challenge, the referendum result was upheld by the Supreme Court.

289. The referendum proposals in relation to the introduction of a divorce jurisdiction in the State were introduced in a context where considerable progress had been made in the area of family law reform and support services (mediation, counselling and legal aid) in recent years.

290. For example, the framework for dealing with financial and property matters in a divorce context was already in place in the sense that experience had been gained from the operation of provisions in the Judicial Separation and Family Law Reform Act, 1989, which deals with these matters in the context of judicial separation. The legislative provisions dealing with the granting by the courts of financial and property orders on foot of a decree of judicial separation contained in the 1989 Act were further developed on by the Family Law Act, 1995 which came into operation on 1 August 1996. This Act includes a provision dealing with arrangements for the possible division of occupational pensions in a judicial separation context.

291. Following the upholding of the referendum result by the Supreme Court, the Government published the Family Law (Divorce) Bill, 1996. This Bill, which after consideration by the Oireachtas and signature by the President came into operation on 27 February 1997, includes the criteria to be applied by the courts before granting divorce decrees (which reflect the criteria contained in the constitutional amendment endorsed by the people in the referendum). It also includes provision for the granting by the courts of various financial, property and other orders in favour of divorced spouses and dependant children. In addition, social welfare provisions have been put in place which were designed to ensure that divorced people would not be disadvantaged in terms of social welfare entitlements, for example, in relation to widow's/widower's pensions. In the taxation area, arrangements have been put in place so that divorced couples will be treated in the same way as separated couples for income tax purposes.

292. Funding for marriage counselling and mediation has also been substantially increased by the State in recent years, with a view, inter alia, to encouraging those couples who can do so to resolve marital difficulties or, if this is not possible, to facilitate separation or divorce on an amicable and agreed basis. Civil legal aid is available to couples seeking divorce in the same way as it is available to those seeking a judicial separation.

Withdrawal of reservation

293. The recent amendment of the Constitution permitting the introduction of a divorce jurisdiction in the State and the coming into operation of divorce legislation of 27 February 1997 have made it possible for Ireland to withdraw the reservation lodged with regard to article 23 (4) of the Covenant at the time of its ratification by the State.

Age of marriage/notification of intention to marry

294. The Family Law Act, 1995 increases the minimum age of marriage from 16 years to 18 years and requires persons to give not less than three months notice of their intention to marry to the Registrar of Marriages. These provisions have been framed to better protect the institution of marriage.

Nullity jurisdiction and declarations of marital status

295. The Family Law Act, 1995 improves access to justice in relation to an application as to a person's marital status or an application for a decree of nullity. It provides that such applications may also be made through the Circuit Court, which will have concurrent jurisdiction with the High Court in such matters for the first time.

Pensions

296. The Family Law Act, 1995 and the Family Law (Divorce) Act, 1996 allow the court, in granting a decree of judicial separation or a decree of divorce, to address the question of what should happen to occupational pensions in the context of what orders it should make to give financial support to dependent spouses and children. The court may take the value of pension rights, accrued at the time of the separation or divorce, into account when determining the extent of the property to be divided and may, where appropriate, provide for the "earmarking" or "splitting" of a pension to provide an entitlement for a dependent spouse or child. 'Earmarking' refers to the setting aside of a portion of the member's pension entitlement for the future benefit of a dependent spouse or child. Pension "splitting" refers to the creation, out of the member spouse's entitlement, of a separate pension for the dependent spouse or child and which may remain within the member's pension scheme or be transferred to another scheme.

Financial compensation orders

297. In judicial separation proceedings and in divorce proceedings the court is also empowered, under the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996, respectively, to make an order for the assignment, in whole or in part, of a spouse's interest in a life assurance policy in favour of the other spouse or dependent child of the family; an order requiring a spouse to take out a life assurance policy in favour of the other spouse or dependent child of the family; or an order to make the necessary payments required under the terms of the policy.

Joint ownership of the family home

298. In Ireland's first periodic report, reference was made to the Family Home Protection Act, 1976 with regard to equality of rights and responsibilities of spouses (para. 246). That Act makes void the purported conveyance by one spouse of any interest in the family home without the prior consent in writing of the other spouse. When the Bill was first introduced it was indicated that its primary purpose was to protect family members from having the family home sold without their knowledge by a vindictive spouse. The legislation has been largely successful in this aim. A further purpose of the Bill was directed towards encouraging spouses to place the family home in joint ownership by granting certain concessions in relation to stamp duty, court fees and registration fees.

299. A more direct attempt was made to provide for automatic joint ownership of the family home by way of the Matrimonial Home Bill, 1993. However, the provisions of the Bill were found by the Supreme Court to be in conflict with the Irish Constitution, and it did not become law. Essentially, the Court took the view that the provisions of the Bill did not constitute reasonably proportionate intervention by the State with the rights of the family and that it constituted a failure by the State to protect the authority of the family.

Maintenance

300. The Family Law Act, 1995 introduced new powers enabling the court to make financial, property and other ancillary orders in cases where a foreign decree of divorce or legal separation is entitled to recognition in the State. It strengthens the enforcement powers of the courts in all proceedings for family maintenance by providing, subject to certain conditions, for automatic attachment of earnings without the need, as heretofore, to prove default in complying with a court order. It also widens the courts' power to order secured periodic payments and lump-sum payments in all maintenance proceedings, and not just separation proceedings as was previously the case.

301. The Family Law (Divorce) Act, 1996 enables the court to make a variety of orders (similar to those listed above) following the granting of a decree of divorce. Prior to the granting of a decree of divorce the court must, inter alia, satisfy itself that proper provision has or will be made for any children of either of the parties to the proceedings.

302. A special agreement on the reciprocal recognition and enforcement of periodic maintenance orders continues to operate between the State and the United Kingdom under the Maintenance Orders Act, 1974. Administrative assistance is provided to a maintenance creditor in either jurisdiction who wishes to avail of the provisions of the agreement. The Jurisdiction of Courts and Enforcements of Judgements European Communities Act, 1988 gives the force of law to the Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters (signed at Brussels on 27 September 1968). This Convention provides, inter alia, for the mutual enforcement of maintenance orders throughout the European Community. The Jurisdiction of Courts and Enforcement of Judgements Act, 1993 allowed Ireland to accede to the Lugano Convention which is intended to provide a similar arrangement between EU and EFTA States. Irish law in the area of international co-operation for the recovery of maintenance has been further updated by the Maintenance Act 1994 which came into force on 25 November 1995. It enables Ireland to ratify two international conventions, i.e. the Convention between Member States of the EU on the Simplification of Procedures for the Recovery of Maintenance Payments done at Rome on 6 November 1990, and the Convention on the Recovery Abroad of Maintenance done at New York on 20 June 1956, both of which provide administrative assistance to maintenance creditors who wish to make recovery from maintenance debtors who reside abroad. The 1994 Act also facilitated the conclusion of a separate maintenance agreement with the United States of America, which is not a party to either the 1990 or 1956 Conventions.

Domestic violence

303. Domestic violence is treated as a very serious matter by the Irish authorities and a number of recent initiatives have been implemented to enhance the protection of women and children at risk.

304. The law in this area, as contained in the Family Law (Protection of Spouses and Children) Act, 1981, has been extensively reviewed taking into account recommendations made by the Second Commission on the Status of Women. Under the 1981 Act, barring and protection orders were granted by courts where the safety or welfare of the applicant spouse or any dependent child warranted it. The barring order operated to bar a violent spouse from the home. The protection order operated as an interim-type order to protect the spouse and children between the period of making the application for a barring order and determination of that application by the court. While it did not bar the spouse from the home, it operated so that any violence perpetrated by the abusive spouse in that interim period resulted in removal of the spouse from the home, prosecution, and possible imprisonment. It made a breach of a barring or protection order a criminal offence punishable on summary conviction by a fine or imprisonment for up to six months, or both. The Gardaí had powers of arrest without warrant for breaches of barring and protection orders.

305. The Domestic Violence Act, 1996 which came into force on 27 March 1996 repealed and re-enacted with substantial amendments the 1981 Act. The Act strengthens the powers of the courts to protect persons from violence by other household members. The Act empowers the courts to get a barring order against

a respondent who is a spouse, cohabitant or adult child of the applicant, subject to conditions. Such orders can be granted on an interim ex parte basis in situations of extreme emergency.

306. The Act also empowers the courts to grant a new type of safety order which is in effect a long-term protection order. The order does not operate to bar a person from the home. It may be sought as a remedy in its own right and not as an interim-type order pending the making of a barring order.

307. Under the Act, since 1 January 1997, regional Health Boards have new powers to apply for orders on behalf of victims of domestic violence who are unable, by reason of fear or trauma, to apply on their own behalf for such orders. Police powers to arrest without warrant in cases of domestic violence have been strengthened. They are entitled to enter a household to effect an arrest for breaches of barring, protection and safety orders and where there is a serious assault or where such an assault is suspected.

308. In recent years, the Garda authorities have developed an integrated response to the policing of domestic and sexual violence. In 1994, the Garda Commissioner issued a policy document on procedures to be followed by Gardaí in incidents of domestic violence. This policy document, which was updated in March 1997, sets out a pro-arrest policy, stating that where powers of arrest exist they should be used. Victims are advised of forms of legal redress available to them through the civil courts and are made aware of any social welfare services available. It also outlines procedures which Gardaí should follow in proceeding with cases of domestic violence, stating that domestic violence should be treated like any other crime. The primary role of Gardaí in such circumstances is one of protection of the victims through law enforcement.

309. In March 1993 a specialist Domestic Violence and Sexual Assault Investigation Unit (which, since January 1997, is part of the National Bureau of Criminal Investigation) was established. The Unit is staffed by Gardaí who are trained and experienced in the investigation of violent and sexual crimes against women and children. The functions of the Unit include:

To survey all cases of domestic violence and sexual violence/assault and to assist where necessary in the investigation of the more complex cases;

To improve methods of investigation by training, advice and assistance;

To liaise with statutory and non-statutory bodies and organizations which have a brief for sexual assault cases;

To make arrangements to perform its duties in tandem with Community Relations Section and Juvenile Liaison Officer personnel; and

To draft a protocol on the role of the Garda Síochána in such cases. The Unit fosters a caring attitude within the Garda Síochána to victims of domestic violence.

310. The policy of the Garda Síochána in relation to domestic violence is subject to ongoing review.

Domestic violence incidents reported to the Gardaí

| Garda Síochána Annual Reports | Incidents | Arrests | Persons convicted |
|---|---|---|---|
| 1994 | 3 951 | 765 | 393 |
| 1995 | 3 956 | 850 | 455 |
| 1996 | 4 645 | 860 | 506 |

311. Figures on domestic violence incidents prior to 1994 are not available as they were not recorded as a separate category. Statistical information on the incidence of domestic violence is now being generated and published in the Garda Síochána Annual Report on Crime. Figures for 1997 are expected to be available by the time the second report is submitted.

Task Force on Violence Against Women

312. In October 1996, the Government set up a Task Force on Violence Against Women which was chaired by the Minister for State at the Tánaiste's (Deputy Prime Minister) Office. The membership of the Task Force was drawn from the relevant government departments and public agencies including Garda and Health Board representation, as well as experts from the voluntary sector. The report of the Task Force was published on 1 May 1997 (copy enclosed).

313. The Task Force, in over 100 recommendations, sets out a national strategy to tackle the problem of violence against women involving three strands:

A network of quality services for abused women and their children;

Intervention programmes for violent men which confront violent behaviour;

Active education programmes aimed at prevention.

Implementation of the report

314. Considerable resources would be required to implement the Task Force's recommendations in full. The recommendations, therefore, are being implemented on a planned and phased basis commencing with the implementation of four of the priority recommendations which are the responsibility of the Department of Health and Children for 1997.

315. In 1997 the Minister for Health and Children approved an additional £1 million for the implementation of the priority recommendations relevant to the health and social services. The funding was allocated as follows:

The phased extension of the national helpline on domestic violence to a 24-hour, seven day a week service;

The expansion of training for nurses, general practitioners and casualty staff, refuge workers and counsellors;

The publication of information packs and leaflets;

The remaining funding was allocated to a range of new and existing women's refuges and rape crisis centres.

316. The Task Force recommended "the establishment of a Steering Committee at a national level which should be chaired by a Minister of State with specific responsibility for this area". In line with this recommendation, responsibility for the establishment of the National Steering Committee has been allocated to the Minister of State at the Department of Justice, Equality and Law Reform.

Article 24

317. In April 1996 Ireland's first report under the Convention on the Rights of the Child was submitted to the United Nations. The report was examined in January 1998. Ireland ratified the Convention without reservation in September 1992 and prepared its first report in consultation with relevant NGOs. A copy of this report has been sent to every school in the country.

Protection of Young Persons (Employment) Act, 1996

318. This Act consolidates the law on young workers and gives effect to international rules on protecting young workers drawn up by the ILO and the EU. The law is designed to protect the health of young workers and to ensure that work during the school years does not put a young person's education at risk. The law raises the minimum age for those employed in a regular full-time job to 16, sets rest intervals and maximum working hours. It also prohibits the employment of those under 18 years for late night working. Furthermore, employers must keep specified records for their workers who are under 18.

Children Bill, 1996

319. On 2 December 1996 the Government published the Children Bill, 1996. The Bill deals predominantly with juvenile justice matters. It provides the statutory framework within which a new juvenile justice system can be created and developed. Its main provisions are outlined below:

(a) The age of criminal responsibility is to be raised from 7 to 10 years, with provision for regular reviews until it is possible to raise it in further stages to 12 years;

(b) The legislation applies to all child offenders between the prevailing age of criminal responsibility and 18 years;

(c) No child (i.e. person under 18 years) can be sentenced to imprisonment;

(d) The decision of a court to detain a child on being found guilty of an offence will be a last resort;

(e) Children's detention schools will be used to detain those under 16 who are sentenced. The Department of Education will have ultimate responsibility for these schools, which will be primarily educational in nature and will provide therapeutic facilities for child offenders with special problems;

(f) The Minister for Justice, Equality and Law Reform will provide detention facilities for 16- and 17-year-old offenders in places where it is intended that they be kept separate from older prisoners;

(g) A diversion programme already operated by the Garda Síochána will be placed on a statutory basis and in suitable cases will involve a family conference on the child. The diversion programme is an alternative to charging a child with an offence;

(h) Parents of a child offender will be encouraged to be involved at every stage when their child commits an offence and will be obliged to attend any court proceedings, unless excused by the judge;

(i) A Children's Court will be established to deal with all matters relating to children. Judges who sit on the Children Court will be designated for that purpose by the President of the District Court;

(j) When a child is found guilty of committing an offence, in most cases the judge must request the preparation of at least one professional report which will assist him or her in arriving at the most suitable action to be taken in relation to the child;

(k) The Bill provides the courts with a wide range of community sanctions which can be imposed on child offenders;

(l) Part X of the Children Bill provides for an amendment to the Child Care Act, 1991 to enable Health Boards to detain young people who are considered to be "out of control" in special care units to enable them to receive appropriate care, education and treatment. The Bill provides that health boards shall run these special care units and empowers the health boards to make arrangements with voluntary bodies or other persons to provide and operate such special care units on their behalf.

320. As mentioned previously (para. 186), the Bill, which had passed its second stage, fell when the last Dáil was dissolved. However, the Government decided to reintroduce the Bill, which is currently awaiting Committee stage before the Dáil.

Children Act, 1997

321. The Children Act, 1997 updates the law on guardianship, custody of and access to children and on the evidence of children in civil proceedings. The Act seeks to:

(a) Allow a father, who has not married the mother of his child, to be appointed guardian of the child by agreement with the mother, without the need to go to court as at present;

(b) Make clear that, in appropriate circumstances, custody of a child may be granted by the court to a father and mother jointly and enables persons related by blood to a child (e.g. grandparents) to apply for access to the child;

(c) Provide, with a view to safeguarding the interests of children, a new emphasis on counselling and mediation and specifies a system of guardianship ad litem together with legal representation subject to certain strict conditions;

(d) Oblige the court, where appropriate, to consider the wishes of the child in proceedings concerning the welfare of the child;

(e) Make it easier for children to give evidence in civil proceedings by use of live television link and by providing for the admissibility of certain hearsay evidence;

(f) Allow the court, subject to certain conditions, to hear the evidence of all children under the age of 14 in civil cases without requiring them to take an oath or make an affirmation.

Provisions referred to at paragraphs (c), (e) and (f) above will be the subject of a commencement order as soon as the necessary arrangements are put

in place. The Act will facilitate Ireland's ratification of the Council of Europe Convention on the Exercise of Children's Rights - the expressed object of which is to promote the rights of children in family proceedings affecting them.

Protection of children

The Child Care Act, 1991

322. The Child Care Act, 1991 was implemented in full on 31 December 1996. The purpose of the legislation is to update the law in relation to the care of children, particularly children who have been assaulted, ill-treated, neglected or sexually abused or who are at risk. Since 1993, additional funding of the order of £40 million on an annual basis has been provided to develop child care and family support services and to strengthen the capacity of the Health Boards to meet the demands of the new legislation. The service developments which have taken place since 1993 involved the appointment of 900 additional professional and administrative staff to the child care services.

323. The 1991 Act includes key provisions dealing with the protection of children in emergencies, care proceedings, and the powers and duties of Health Boards in relation to children in their care. The implementation of these provisions has greatly strengthened the powers of the courts, the Health Boards and the Gardaí to intervene to protect children from abuse and neglect.

Regulations governing the placement of children in care

324. New regulations in relation to the placement by Health Boards of children in residential care, foster care and with relatives were brought into operation on 31 October 1995. The three sets of regulations provide the Health Boards with a range of options in looking after children in care. They also require the Boards to visit, supervise and review children in their care on a more systematic basis than before. The regulations are designed to ensure that the changing needs of children are not lost sight of and give full recognition to the role of parents and carers in the process

325. In April 1995 a new procedure for the notification of suspected cases of child abuse was introduced between the Health Boards and the Gardaí. A central feature of the new procedure is a standardized notification system between the agencies which allows for a coordinated response by both agencies.

Child pornography

326. The new Government plans a Child Pornography Bill, which will encompass issues relating to child pornography and trafficking in children for the purposes of sexual exploitation. Various measures are being proposed, including the criminalization of the possession of such pornography for personal use. It is further proposed that all forms of child pornography - photographs, films, videos or material in written or auditory

form, the abuse of the Internet and encouraging children to be used in the production of such pornography - will be the subject of criminal offences.

Child sex tourism

327. Arising from the need to tackle the problem of sex tourism, the Sexual Offences (Jurisdiction) Act, 1996 was enacted. It has a dual focus: first, targeting child sex tourists by providing that Irish citizens, or persons ordinarily resident in Ireland, who engage in sex with children outside Ireland can be dealt with by the Irish courts; second, targeting organizers by making it an offence to arrange transport for or actually transport child sex tourists, or to publish information on child sex tourism.

Education Bill, 1997

328. The new Government published an Education Bill in December of 1997. This Bill was the culmination of a lengthy process of consultation and dialogue between the Department of Education and the Partners in Education. It represented a landmark in Irish education, providing for major structural reforms of the educational system while balancing the interests of the Partners in Education - parents, patrons, students, teachers and the State.

329. As indicated in relation to article 18 (para. 228), the Education Bill provided, for the first time, a statutory footing for the administrative and educational structures of the Irish education system.

330. The Bill provided for a devolved system of administration through the establishment of 10 education boards, as well as a statutory framework for the management of schools at first and second level. However, with the dissolution of the Dáil in May 1997, the new Government is to introduce its own Bill.

Domestic violence

331. See details in relation to article 23 (paras. 303-316).

## Article 25

Registration of political parties

332. Electoral law provides that the Clerk of the Dáil shall be the Registrar of Political Parties and requires him/her to register any party applying for registration which is, in his/her opinion, a genuine political party organized to contest elections in the State. A party cannot be registered if its name is unduly long or does not clearly distinguish the party from other registered political parties. There is provision for appeal against the Registrar's proposed ruling on an application to an appeal board chaired by a High Court judge. The Registrar can cancel a party's registration if it ceases to be

active or is no longer entitled to be registered. An appeal may also be made to the appeal board against the Registrar's intention to cancel a party's registration.

333. In the period since September 1992, 14 parties applied for registration, of which 8 were approved by the Registrar and another was approved by the appeal board. In June 1997, 17 political parties were registered.

Right to stand for election

Office of President

334. Article 12 of the Constitution provides that every citizen who has reached his/her thirty-fifth year is eligible for the office of President. This article also provides that the President's term of office is seven years, that no person may hold the office for more than two terms and that the President cannot be a member of the Dáil or Seanad. There are no statutory disqualifications from holding the office of President.

Dáil and Seanad Éireann

335. Article 16.1.1 of the Constitution provides that every citizen, without distinction of sex, who has reached the age of 21 years and who is not placed under disability or incapacity by the Constitution or by law, shall be eligible for membership of the Dáil. Persons precluded by the Constitution from Dáil membership are holders of the offices of President, Comptroller and Auditor General and judges. Article 18.2 provides that a person, to be eligible for membership of the Seanad, must be eligible to become a member of the Dáil.

336. The following persons are disqualified by law from standing for or membership of the Dáil:

Senior officials of European Union institutions;

Members of the Garda Síochána and full-time members of the Defence Forces;

Persons undergoing prison sentences exceeding six months or penal servitude;

Civil servants who are not expressly permitted by their terms of employment to be members (see below);

Persons of unsound mind;

Undischarged bankrupts.

337. In the case of elections of panel members of the Seanad, article 18 of the Constitution provides that candidates must represent specific vocational interests.

The European Parliament

338. Irish citizens and citizens of the European Union ordinarily resident in the State are entitled to stand for election to the European Parliament.

339. Article 6 of the Act attached to the EU decision of 20 September 1976, which is directly binding on member States, provides that membership of the Government and membership of and employment by EU institutions are incompatible with the office of member of the European Parliament (MEP). Article 5 of that Act also provides that membership of the Parliament is compatible with membership of a national parliament. Irish electoral law provides that a person who is not eligible for membership of the Dáil may not stand for election as an MEP. Irish law also provides that, if the Attorney-General, a minister of State (junior minister) or the Chairman or Deputy Chairman of Dáil or Seanad Éireann is elected as an MEP, (s)he ceases to hold such office. In accordance with the terms of a 1993 EU Directive, Irish law provides that a citizen of the European Union ordinarily resident in the State is eligible to stand for election in the State to the European Parliament, provided (s)he is not disqualified from standing in the home member State. The Directive and Irish electoral law also provides that a citizen cannot stand for election in the home member State if (s)he is contesting the election in the member State of residence.

Local authorities

340. Under new electoral law which will come into operation at the next local authority elections scheduled for 1999, citizens of Ireland and non-nationals ordinarily resident in the State who have reached the age of 18 years will be eligible for election to local authorities. The following persons are disqualified by law from standing for election to or becoming a member of a local authority:

MEPs and senior officials of EU institutions;

Ministers and ministers of State;

The chairman of Dáil and Seanad Éireann and of certain Oireachtas committees;

Judges;

The Comptroller and Auditor General;

Members of the Garda Síochána and full-time members of the Defence Forces;

Civil servants who are not expressly permitted by their terms of employment to be members (see below);

Persons who fail to comply with court judgements for payments due to local authorities;

Persons convicted for fraudulent or dishonest dealings with local authorities or for corrupt practice.

Public servants and politics

341. Civil servants are disqualified from standing for or becoming a member of the Dáil, Seanad or European Parliament, unless expressly permitted by their conditions of service. This disqualification was reaffirmed in the case of Dáil elections in the Electoral Act, 1992 and, in the case of European elections, in the European Parliament Elections Act, 1997. A civil servant wishing to contest a Dáil, Seanad or European election must resign from the service. Civil servants above clerical level are completely debarred from political activity, while civil servants below clerical level may - subject to specific permission in certain cases - take part in political activity, including standing for and membership of local authorities.

342. The rationale behind these restrictions is the overriding necessity for civil servants to act, and be seen to act, impartially and free from political motivation. This principle would be undermined if, for example, a civil servant were granted leave of absence both during the election to, and possibly during his/her subsequent membership of, the Dáil and then permitted to return to the service.

343. There are no restrictions on local authority staff engaging in political activity, i.e. they may join a political party and may stand for election at Dáil, Seanad, European Parliament and local authority elections. If elected to the Dáil, Seanad or European Parliament, local authority staff are granted special leave without pay. However, members of a local authority are debarred by statute from employment above clerical officer level in that local authority and from employment in any "major office" in adjoining authorities.

344. The legislation governing most recently established State-sponsored bodies provides that staff who stand for election to the Dáil, Seanad or European Parliament are granted special leave without pay for the duration of the election and of their membership of these bodies. Such staff are also generally granted special leave without pay if they become members of local authorities - the requirement to take special leave may be waived in the case of lower grade staff.

Right to vote

Presidential elections

345. Article 12.2 of the Constitution provides that the President shall be elected by direct vote of the people and that every citizen who is eligible to vote at a Dáil election has the right to vote at a presidential election.

Dáil elections

346. Article 16.1.2 of the Constitution confers the right to vote at Dáil elections on all citizens, and such other persons in the State as may be determined by law, without distinction of sex, who have reached 18 years of age, are not disqualified by law and comply with the provisions of the law relating to Dáil elections. The law provides that the right to vote at Dáil elections may, by order approved in draft by the Dáil and Seanad, be extended to persons ordinarily resident in the State who are nationals of other EU member States which extend the right to vote at their national parliamentary elections to Irish citizens resident in those member States.

Seanad elections

347. Article 18 of the Constitution provides that the Seanad shall be composed of 60 members of whom 11 are nominated by the Taoiseach. A further 43 are elected from panels of candidates representing specified vocational interests, including the Arts, Agriculture, Labour, Industry and Commerce and Public Administration. The remaining 6 members are elected by universities or institutes of higher education. Article 18 also provides that elections of Seanad members shall be regulated by law.

348. Electoral law provides that the electorate for the 43 panel seats at every Seanad general election comprises the newly elected Dáil members, the outgoing Seanad members and the members of every council of a county or county borough. A person who is a member of more than one such council is entitled to vote once only at an election.

349. Electoral law prescribes the National University of Ireland and the University of Dublin as three-seat constituencies at Seanad elections. Every person who, on the qualifying date for the register of electors, is a citizen of Ireland, has received a degree from the National University of Ireland or the University of Dublin and has reached the age of 18 years, is entitled to be registered and to vote in the relevant constituency at a Seanad election. The other universities and institutions of higher education in the State are not represented in the Seanad.

350. There is no residency requirement for voting at Seanad elections.

European Parliament elections

351. Electoral law provides that every person who, on the qualifying dates for the annual register of electors, is either an Irish citizen or a national of another EU member State, has reached the age of 18 years and is ordinarily resident in a constituency, is entitled to be registered and to vote in that constituency at a European Parliament election.

Local authority elections

352. Electoral law provides that a person who has reached the age of 18 years and is ordinarily resident in a constituency, is entitled to be registered and to vote at local authority elections in that constituency. There is no citizenship requirement for voting at local elections.

Referenda

353. Article 46.2 of the Constitution provides that every bill containing a proposal to amend the Constitution must be referred by referendum to the people for a decision, in accordance with the law relating to a referendum. The proposal is approved if a majority of those voting support it (art. 47.1).

354. Article 27 of the Constitution provides for the referral of a bill by the President to the people by referendum, following a joint petition by a majority of Senators and at least one third of Dáil deputies, on the grounds that the bill contains a proposal of such national importance that the will of the people on it ought to be ascertained.

355. Article 47.3 of the Constitution confers the right to vote at a referendum on every Irish citizen who has the right to vote at a Dáil election.

Registration of electors

Registration of Travellers

356. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 615), suggested that Ireland undertake additional affirmative action aimed in particular at improving the situation of the Travelling Community in public affairs, including the electoral process. Electoral law provides that "ordinary residence" in a constituency on a specific date is a condition for registration and voting at referenda, presidential, Dáil, European and local elections. However, the Electoral Act, 1992 recognizes that a person may be ordinarily resident in more than one place and thus have a prima facie claim for registration in respect of more than one premises (in law "premises" does not necessarily imply a structure of any kind). The law provides that, in such circumstances, a person may only be registered once and the decision on where the person is to be registered is

"subject to any expression of choice by such person". These provisions enable Travellers to be registered as electors, even where they have a nomadic lifestyle.

357. In the light of the recommendations of the Government-appointed Task Force on the Travelling Community (see paragraph 369 for more details), consideration is being given to drawing up revised guidelines for registration authorities on procedures to maximize the number of Travellers registered as electors, whilst ensuring that each elector is registered once only and, in appropriate cases, in the registration area of his/her choice.

Article 26

358. The Constitution of Ireland provides in article 40.1 for the equality of all citizens before the law. This provision has already been analysed in the Government's comments in relation to article 2 of the Covenant. The remarks made there concerning article 40.1, in the context of non-discrimination and the rights secured by the Covenant, apply with equal force to non-discrimination as a general principle. In addition, the Constitution of Ireland expressly prohibits discrimination on grounds of religious profession, belief or status (art. 44.2.3) and political or other opinion (art. 40.6.1.i).

359. As regards the right to equality in employment between men and women, this is provided for in the Anti-Discrimination (Pay) Act, 1974, and the Employment Equality Act, 1977. The repeal of both of these Acts and their re-enactment is provided for in the Employment Equality Bill, 1997, which is expected to be enacted within a matter of weeks.

Unfair Dismissals Acts, 1977 to 1993

Purpose of the Acts

360. The purpose of the Acts is to protect employees from unfair dismissal. They set down criteria according to which the fairness or otherwise of dismissals are judged. They also provide an adjudication system and redress for an employee whose dismissal has been found to be unfair.

361. In general, the Acts apply to any person working under a contract of employment or apprenticeship, or employed through an employment agency.

362. In the case of persons employed through an employment agency, the third party (hirer/user) is deemed to be the employer for the purpose of redress under the Acts.

363. The Acts do not apply to a person who is normally required to work for the employer for less than eight hours a week or who has been in the

continuous service of the employer for less than one year. Continuous service is determined by rules set out in the amended First Schedule Minimum Notice and Terms of Employment Act, 1973.

364. The requirement of one year's continuous service does not apply where the dismissal results from:

An employee's pregnancy, giving birth, breastfeeding or any matters connected therewith;

The exercise or proposed exercise by an employee of a right under the Maternity Protection Act, 1994;

The exercise or contemplated exercise by an employee of the right to adoptive leave, or additional adoptive leave under the Adoptive Leave Act, 1995;

An employee's trade union membership or activities.

365. In determining whether an employee has the necessary service to qualify under the Acts, a Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court may consider whether the employment of a person on a series of two or more contracts of employment, between which there was no more than 26 weeks' break, was wholly or partly connected with the avoidance of liability by the employer under the Acts. Where such a connection is found, the length of the various contracts may be added together to assess the length of service of an employee for eligibility under the Acts.

Unfair dismissals

366. Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from any of the following:

(a) An employee's trade union membership or activities, either outside working hours or at those times during working hours permitted by the employer;

(b) Religious or political opinions;

(c) Race or colour or sexual orientation;

(d) The age of an employee;

(e) An employee's membership of the Travelling Community;

(f) Legal proceedings against an employer where an employee is a party or a witness;

(g) Unfair selection for redundancy;

(h) An employee's pregnancy, giving birth, breastfeeding or any matters connected therewith;

(i) The exercise or proposed exercise by an employee of the right to protective leave or natal care absence under the Maternity Protection Act, 1994;

(j) The exercise or contemplated exercise by an employee of the right to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995.

367. It can also be construed as dismissal if a person's conditions of work are made so difficult that (s)he feels obliged to leave. This is called constructive dismissal.

## Article 27

368. Local authorities carry out an annual count of the number of Traveller families already in local authority accommodation or on the roadside. The count is carried out in November each year. The results do not include trader Travellers or Traveller families who have acquired their own accommodation with or without the assistance of local authorities. On 28 November 1997 there were 3,394 Traveller families in local authority, or local authority-assisted, accommodation, while a further 1,127 families were on the roadside or other unserviced locations.

### Task Force on the Travelling Community

369. The Human Rights Committee, in its comments on Ireland's first periodic report (A/48/40, para. 615), suggested that Ireland undertake additional affirmative action aimed at improving the situation of the Travelling Community and, in particular, facilitating and enhancing the participation of Travellers in public affairs. The Minister for Equality and Law Reform established a Task Force on the Travelling Community in July 1993 to advise and report on the needs of Travellers and on government policy generally in relation to the Travelling Community. Their brief covered a range of areas such as accommodation, health, equality, education and training. The Task Force issued an interim report in January 1994 and published its final report in July 1995. The report of the Task Force was the first comprehensive review of the needs of the Traveller Community since the report of the Travelling People Review Body was published in 1983. The publication of the report came at a time when the needs of Travellers and their relationship with the settled community was the subject of public debate particularly with regard to the question of accommodation.

370. The report of the Task Force examines and makes recommendations in relation to three principal areas:

(a) Key issues of relevance to Travellers including accommodation, access to health services, education and training, economic development and employment, including the coordination of approaches by the relevant statutory agencies whose services impact on members of the Traveller Community;

(b) Relationships between Travellers and settled people;

(c) The experience of Travellers, with a particular focus on culture and discrimination.

371. The main elements of the recommendations put forward by the Task Force include:

The need to provide 3,100 units of additional accommodation of different types, including Traveller-specific accommodation, by the year 2000, with supporting administrative and legislative changes;

The introduction of measures to improve the health status of the Traveller Community and to remove the obstacles to Traveller access to the health services;

The reorganization and development of education and training services in order to provide for increased participation by Travellers;

The encouragement and undertaking of new initiatives to support the development of the Traveller economy and increased levels of Traveller participation in the mainstream labour force;

The adoption of measures which address the problem of discrimination faced by the Traveller Community;

The introduction and/or improvement of mechanisms to ensure that statutory agencies providing services which impact on Travellers do so in a coordinated manner;

The need to increase participation by Travellers and Traveller organizations in the decision-making process in areas which affect Traveller lifestyle and environment.

372. The report also examines mechanisms for facilitating improved relationships between Traveller and settled communities, particularly at local level, and makes recommendations with a view to reducing conflict and strengthening mutual respect and understanding, which it is hoped will merge into what the Task Force calls a "Strategy for Reconciliation".

373. As the report of the Task Force impacts on a wide range of policies which are the responsibility of a number of ministers, the Government established an Inter-Departmental Working Group of officials to consider the implementation of the report including, in particular, the costs involved.

Government strategy on Travellers

374. In March 1996, the Government, having considered the report of the Task Force on the Travelling Community, announced its approval for the introduction of a Government Strategy on Travellers.

375. The Strategy represents a comprehensive and integrated approach to the issues affecting the Travelling Community, recognizing, for example, that without provision of adequate accommodation, improvements in educational and health provision will be more difficult to undertake. Likewise, following on the Government's Strategy, it is envisaged that Travellers will be able to participate more fully in economic development both through the growth of the Traveller economy and greater participation in the mainstream labour force. The range of measures agreed on include:

A commitment to strengthen health and education services for Travellers;

The transfer of responsibility for Senior Traveller Training Centres from the Department of Enterprise, Trade and Employment to the Department of Education, Science and Technology;

A commitment for the Minister of State at the Department of the Environment and Local Government to implement a five-year National Strategy for Traveller Accommodation, which was developed from the recommendations on accommodation contained in the Task Force's report;

A commitment to put in place procedures whereby local authorities would adopt five-year local Traveller accommodation programmes as part of a coordinated national programme to provide 3,100 units of accommodation for the Traveller Community, known as the "Traveller Accommodation Programme";

The establishment of a consultation process with Travellers at both local and national levels;

The establishment of a special unit in the Department of the Environment and Local Government to monitor the implementation of the National Strategy for Traveller Accommodation.

376. On 2 October 1996, the Minister for Equality and Law Reform updated the Government on the implementation by relevant government departments of the Government's Strategy on Travellers. The position is as follows.

Department of the Environment and Local Government

377. In May 1996, a special unit (the "Traveller Accommodation Unit") was established in the Department of the Environment and Local Government to oversee the National Strategy for Traveller Accommodation, coordinate the local plans and monitor the implementation of the National Traveller Accommodation Programme, which forms part of the wider National Strategy.

Proposals for new and amending legislation relating to Traveller accommodation have been published and are expected to be enacted in July 1998. Local authorities will be advised on the preparation of local Traveller accommodation programmes, the establishment of local Traveller accommodation committees and other requirements of the legislation, when enacted. Revised guidelines on the design of permanent residential caravan parks for Travellers were issued to local authorities in October 1997; guidelines on other accommodation options are being prepared.

378. A sum of £11 million has been allocated in the 1998 estimates for local authority group housing schemes and halting sites for Travellers. Capital funding for standard housing let to Travellers is additional. There is a new allocation of £1 million in 1997 to assist local authorities in improving the management and maintenance of Traveller accommodation. This scheme also allows for the funding of a number of pilot projects to facilitate greater participation by Travellers in the management and maintenance of such accommodation.

379. In line with the commitment in the National Strategy, a National Traveller Accommodation Consultative Group was set up on 4 December 1996. Its terms of reference are:

(a) To monitor the preparation, adequacy and implementation of local accommodation programmes in general. The Group would have no function in relation to specific proposals for accommodation in individual cases;

(b) To advise the Minister on the most appropriate measures for improving consultation with Traveller interests and Traveller tenant participation at local level in the design and management of accommodation;

(c) To develop and recommend initiatives which will promote greater understanding of the concerns and needs of both Travellers and the settled community;

(d) To advise the Minister on any aspect of Traveller accommodation, including legal aspects, which it considers appropriate or on any matter which may be referred to it by the Minister from time to time.

Department of Education

380. The statistics for enrolment and school attendance among Traveller children have improved significantly in recent years. There are 5,000 Traveller children of primary school age, or younger, in Ireland and it is now estimated that approximately 4,600 of these (92 per cent) attend either pre-school or primary school. However, very few Travellers attend secondary school.

381. Special measures at primary level include the provision of extra funding and over 200 extra teachers to schools enrolling Traveller children and the development of reading material for use with these children.

382. The 1997/98 capitation grant for Traveller children currently stands at £171 for Traveller children under 12 and at £382 for Traveller children of 12 and over. Five additional visiting teachers will be appointed in 1998, and there are now 20 such visiting teachers in total. The transfer of responsibility for the full administration of Traveller Training Centres from the Department of Enterprise, Trade and Employment to the Department of Education took effect on 6 April 1998. A National Coordinator for Senior Traveller Training Centres has been appointed up to the end of 1999.

Department of Health and Children

383. An internal inter-divisional committee has been set up in the Department to discuss the recommendations of the Task Force on the Travelling Community and to draft a policy document on Travellers' health in line with a commitment in the Department's health strategy document "Shaping a Healthier Future".

384. The Department hopes very shortly to have their Traveller's Health Policy Statement completed and, in line with recommendations by the Task Force, appointments for a Traveller Health Committee made.

Department of Justice, Equality and Law Reform

385. As outlined above (paras. 72-76), proposed employment equality legislation to prohibit discrimination on a range of grounds and render discrimination unlawful in the workplace, was found to be unconstitutional and has been redrafted in the light of the Supreme Court decision. The Equal Status legislation dealing with discrimination in non-employment areas was also deemed to be unconstitutional by a Supreme Court judgement delivered on 19 June 1997.

Linguistic minorities

386. With respect to linguistic minorities, it may be observed that, while the Irish language is the first official language of the State (the other language being English), it is used as a vernacular only by a minority of the population as a whole, particularly in a number of areas designated officially as Irish speaking districts, known collectively as the Gaeltacht.

387. A government minister is charged with the promotion of the cultural, social and economic welfare of those areas and with encouraging the preservation of Irish as a vernacular language. The minister also heads a government department which, inter alia, promotes a number of schemes designed to help foster the Irish language not only in the Gaeltacht but also in the country in general.

388. As far as the Gaeltacht is concerned the Department endeavours to improve the infrastructure of these areas, and consequently the quality of life of those who live in them, by providing increased grant-aid for amenities such as housing. Grants for improvement works on existing houses are also

available, although such grants are no longer paid outside the Gaeltacht. The Department also provides full-cost grants to improve marine facilities such as piers and slipways, although central government grants for such facilities outside the Gaeltacht do not exceed 75 per cent. In addition, the Department provides grants for numerous recreational facilities, such as community halls and sporting facilities, for which assistance is not normally available from central Government outside the Gaeltacht. Grants are also paid to approved households on behalf of students of Irish who attend Irish-language summer colleges. The Department also plays an active role in assisting Irish-language-based cultural activities with grant-aids for the publication of books of general interest in the Irish language.

389. The Minister also has under his aegis two statutory bodies. One of these, Údarás na Gaeltachta, is primarily concerned with the promotion of industrial and economic development in the designated areas. The other statutory body, Bord na Gaeilge, is charged with the promotion of Irish as a living language throughout the country. While most of its work is of an advisory nature, it provides grants for Irish language nursery schools, magazines and a weekly newspaper in the Irish language.

390. In 1970 the Government accepted a scheme proposed by RTÉ for the provision of a radio service for the Gaeltacht and Irish speakers in general. In connection with the establishment of Radio na Gaeltachta, a committee, Comhairle Radio na Gaeltachta, was appointed under section 21 of the Broadcasting Authority Act.

391. As outlined in relation to article 19 (para. 246), an Irish-language television service, Teilifís na Gaeilge, commenced services on 31 October 1996. It is intended that the service will operate as a separate statutory entity, but until such time as the necessary legislation can be put in place, RTÉ has been charged with the establishment, programming and initial operation of the service.

Religious minorities

392. The right of religious minorities to profess and practise their religion is fully respected in Ireland. Although 93 per cent of the population profess the Roman Catholic religion, there is no State-established church in Ireland. An analysis of census returns since the foundation of the State shows a steady decline in the number of members of the Church of Ireland, the Presbyterian Church, the Methodist Church and other Protestant denominations until the 1960s, and thereafter the numbers have tended to stabilize. In recent censuses there has been a large increase in the number of persons who have stated they are of other religions, or of none. There are members of the minority religions in prominent positions in all of the major political parties, the judiciary, civil service, and business and professional life of the country. In recent years there has been a growth in the number of Muslims in Ireland (which was formerly insignificant) and this has led to the building of a number of mosques and the opening of the first Muslim National School,

(i.e. a primary school under Muslim management but paid for mainly out of State funds). (See also article 18, paragraphs 227-241, in relation to freedom of religion.)

## III. CONSULTATION WITH THE NON-GOVERNMENTAL ORGANIZATION SECTOR

### A. Introduction

393. Recognizing the important role that the NGO sector plays in human rights matters, the Department of Foreign Affairs, in the drafting of this report, consulted formally and informally with a representative cross-section of the NGO sector. A complete list of the NGOs consulted appears in paragraph 399.

394. The purpose of the process of consultation was threefold:

To ensure Ireland's second report was an accurate reflection of the current status in Ireland of the International Covenant on Civil and Political Rights;

To pinpoint the key concerns of the NGO sector and to afford them a meaningful opportunity to present to government officials their ideas on how Ireland could achieve fuller implementation of the International Covenant on Civil and Political Rights;

To explore the implementation by Ireland of the International Covenant on Civil and Political Rights from an alternative perspective and to record this in a specific chapter in this report.

395. On 28 October 1997, the Human Rights Unit of the Department of Foreign Affairs convened a consultative meeting between government departments involved in the drafting of Ireland's second report and 19 prominent NGOs. In the weeks before the meeting, the participating NGOs were furnished with the draft report on a confidential basis; it was hoped that this would facilitate an in-depth examination and allow concerns to be made known from an informed position. The meeting did not set out to achieve agreement or consensus but rather to allow for a constructive exchange of views on the report.

396. The participants at the meeting proceeded to re-examine the draft report on a thematic basis and discussed the NGO submissions already received. The government departments with responsibility for the relevant sections of the report were asked to reply to the NGOs.

397. It was agreed to include in the draft report revisions to facts and statistics in the draft which were either outdated or inaccurate; several omissions were also rectified. In relation to substantive comments, it was agreed that the most appropriate procedure would be to supplement the final report with a chapter recounting the principal points raised in the course of the consultation process.

398. Some of the key concerns of the NGO sector are outlined in the following paragraphs. This is not an exhaustive analysis of all the issues raised but it illustrates some of the main areas discussed during the drafting of the report.

399. The following non-governmental organizations took part in the process of consultation during the preparation of Ireland's second report:

Campaign to Separate Church and State

Children's Rights Alliance

Disability Federation of Ireland

Gay and Lesbian Equality Network

Harmony

Irish Commission for Justice and Peace

Irish Congress of Trade Unions

Irish Council for Civil Liberties

Irish Council for People with Disabilities

Irish Countrywomen's Association

Irish Penal Reform Trust

Irish Refugee Council

Irish Traveller Movement

Law Society of Ireland

National Women's Council of Ireland

Pavee Point Travellers Centre

Rescue Trust

The Bar Council

Women's Aid

## B. Equality and primary rights (arts. 1-3, 26 and 27)

400. Several NGOs raised the issue of the incorporation of the Covenant into Irish law, expressing the view that the legal arguments against incorporation were not insuperable. The provision of legal aid for applicants under the Covenant was also mentioned.

401. A number of NGOs pointed to what they considered as being important omissions in the report, which included:

(a) No reference to the question of ratifying the International Convention on the Elimination of All Forms of Racial Discrimination (in reply, the Department of Justice, Equality and Law Reform informed the meeting that work was in progress on revised legislation to allow for ratification and it was envisaged that this would be completed in the course of 1998);

(b) No reference to either the United Nations Code of Conduct for Law Enforcement Officials or to the recommendations of the Council of Europe Committee on the Prevention of Torture following their visit to Ireland in 1993.

402. The issue of human rights education was discussed, with some NGOs expressing the view that members of the armed forces, Gardaí and prison officers did not receive adequate training in this regard, and that what education was available was not structured properly. It was also suggested that the use of the term "tolerance" in the report should be replaced by the term "acceptance and appreciation of".

403. Many NGOs referred to sections of society which they felt were discriminated against and which had not been referred to adequately in the report. Among the concerns raised in this regard were:

The conditions of disabled people in residential care and, in particular, their position under the Juries Act 1976;

The treatment of programme refugees from Viet Nam;

The general lack of recognition of both ethnic minorities and minority languages, including the need to recognize sign language as a minority language. The importance of ratifying the Council of Europe Framework Convention on the Protection of National Minorities was also stressed, and calls were made for greater Department of Education coordination with linguistic minorities;

The fact that effective control of large areas of the education system remained with religious denominations;

That the issue of domestic violence was not considered as part of a broader understanding of discrimination under article 2, as it was felt it should be;

That the powers of the Employment Equality Authority, which were to be extended under the Employment Equality Bill, might not now be broadened to protect lesbians and gay men;

That the section referring to non-nationals was too sparse. It was noted that the Interdepartmental Committee on Non-Irish Nationals had failed to make any report since November 1993; and

The lack of any monitoring system for the implementation of the recommendations of the Task Force on Travellers.

### C. Prisons and courts (arts. 7-11, 14-16)

404. Many NGOs raised the issue of Ireland's failure to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Department of Justice, Equality and Law Reform responded by stating that ratification would be possible once the necessary legislation had been enacted. The relevant bill has already been tabled and is currently before the Oireachtas.

405. Ireland's criminal legal aid system was criticized as being under-resourced and failing to meet the demand of the criminal justice system.

406. Among many criticisms of conditions in the prison system, particular concerns were raised in relation to (a) the introduction of a barrier regime in Mountjoy Prison for certain prisoners and (b) the failure to grant proper status to the Prisons Inspectorate and visiting committees. Many NGOs were of the view that there had been a failure to provide prisoners with the opportunity to engage in meaningful work while in prison. Furthermore, it was felt that the report had failed to address the issue of overcrowding, which was considered to be the most significant problem in the prison system. In this regard, it was thought that the statistics included in the report were incomplete and did not adequately reflect the reality of the situation.

407. Services provided to prisoners, especially drug rehabilitation services, were considered to be inadequate and it was suggested that there was a general failure within the system in dealing with prisoners with special needs, such as prisoners with mental or physical disabilities or difficulties, and prisoners suffering from addiction and depression. The problem of suicide in Irish prisons was a cause of grave concern to many NGOs.

408. A number of NGO representatives also referred to the failure to meet the goal of segregating juvenile offenders from adult offenders. Also raised was the issue of accessibility for disabled persons to many of our prisons and courtrooms. It was pointed out that Ireland still had provisions for civil

imprisonment and, although the number of prisoners in this category was small, the relevant law was still considered by the NGOs to be a contravention of article 11 of the Covenant.

409. Some NGOs alleged that there were instances of ill-treatment of suspects by Gardaí and that the Garda Complaints Board was not sufficiently independent to monitor such instances effectively. The safeguards concerning interviews in Garda stations were considered insufficient. In regard to the judiciary, it was suggested that our legislation for the disciplining of judges was archaic, untested and in need of reform.

410. In the absence of mental health legislation, which the Government was committed to introducing, the civil rights of mentally ill patients were not considered to be properly protected.

411. The representative of the Department of Justice, Equality and Law Reform undertook to forward the concerns expressed at the meeting to the Prisons Division of the Department and invited the NGOs present to pursue these concerns directly with that Department on an ongoing basis.

### D. Refugees and asylum seekers (arts. 12 and 13)

412. In the light of the major increase in the past two years in the number of persons seeking asylum in Ireland, many NGOs expressed the opinion that Ireland's administrative and legislative handling of the situation had failed to protect adequately the rights of those asylum seekers.

413. There was a widespread feeling that it was imperative that the Government implement the Refugee Act, 1996, and introduce an independent appeals procedure for asylum applications immediately. There was also concern that Ireland's administrative processes at the point of entry for dealing with applications from asylum seekers were failing to vindicate the rights of those persons.

414. Some NGOs, in calling for the Act to be implemented, pointed to the fact that the Refugee Act was a particularly progressive piece of legislation which compared favourably with similar legislation in other European countries. It was pointed out that the inclusion of discrimination on the grounds of sexual orientation as a recognized type of discrimination for the purposes of the Act was an innovative step in an international context.

415. Many NGOs were concerned at the use of powers of detention for asylum seekers being deported. In such situations, the legal safeguards protecting the civil rights of asylum seekers were deemed to be inadequate.

416. The Department of Justice, Equality and Law Reform, while conceding that the sudden increase in the number of applications had exposed shortcomings in the system, confirmed that there would be an increase in the number of staff in the Department dealing with the issue.

## E. Children and the family (arts. 23 and 24)

417. Many issues were raised relating to the rights of the child which are covered more extensively in Ireland's first national report under the Convention on the Rights of the Child. Of special note were the absence of a clear policy on family reunification for refugees, the need for reform of the constitutional provisions on the family, the need for an ombudsman for children and the age of criminal responsibility.

418. It was also suggested by some NGOs that disabled children were excluded from protective legislation covering children in care. The Department of Health and Children clarified the position by stating that the exclusion of disabled children from the relevant child-care legislation was a temporary situation, pending the introduction of complementary legislation.

## F. Other civil rights (arts. 4-6, 17-22 and 25)

419. Concerns were raised about various areas of Irish law which, it was felt, were in conflict with the provisions of the Covenant. Many of these issues arise from the existence on the statute book of obsolete legislation; other issues are currently being dealt with by reforming legislation.

420. Prominent among these issues was the continuing absence of provisions allowing prisoners to vote in secret.

421. Many NGOs expressed the view that the Offences Against the State Act and the continuing existence of the Special Criminal Court constituted an abuse of the provisions of the Constitution relating to emergency powers.

422. In similar terms to comments expressed in relation to the issue of discrimination, a number of NGOs expressed the view that the role of religious organizations in the education system amounted to a form of discrimination and violated the principle of open access to education for all. They cited, in particular, the low number of multi-denominational schools in the country.

423. Other NGOs were concerned that recent public order legislation granted powers to the Gardaí which were potentially open to abuse.

## Notes

1/ As of 17 August 1998.

2/ Kelly, J., The Irish Constitution, Dublin, 1994 at xcii.

3/ Following the change of Government in June 1997 the Department of Equality and Law Reform and the Department of Justice were amalgamated and a new department was created with the title "Department of Justice, Equality and Law Reform".

4/ In the case of A & B v. Eastern Health Board, Judge Mary Fahy, C and the Attorney-General (Notice Party), unreported judgement, 28 November 1997, which involved a 13-year-old girl from the Travelling Community, who was pregnant as a result of alleged rape, Geoghegan J. in the High Court stated that, "where a psychiatrist as in this case gives strong evidence to the effect that a child is likely to commit suicide unless she has a termination of her pregnancy, that termination of pregnancy which is a medical procedure is clearly in my view also a medical treatment for her mental condition". The C case therefore was decided on the criteria already established in the X case, i.e. existence of risk of suicide.

5/ This Department was renamed in June 1997 the Department for Arts, Heritage, Gaeltacht and the Islands.

## List of materials attached to Ireland's second report

A. Legislation (including bills and statutory instruments)

1. Adoptive Leave Act, 1995

2. Bail Act, 1997

3. Children Bill, 1996

4. Children Bill, 1997

5. Child Care Act, 1991

6. Court and Court Officers Act, 1995

7. Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 - S.I. No. 119 of 1987

8. Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997 - S.I. No. 74 of 1997

9. Criminal Justice (Public Order) Act, 1994

10. Criminal Law Act, 1997

11. Criminal Procedure Act, 1993

12. Domestic Violence Act, 1996

13. Education Bill, 1997

14. Electoral Act, 1992

15. Employment Equality Bill, 1996

16. Employment Equality Bill, 1997

17. Equal Status Bill, 1997

18. European Parliament Elections Act, 1997

19. Family Law Act, 1995

20. Family Law (Divorce) Act, 1996

21. Freedom of Information Act, 1997

22. Maternity Protection Act, 1994

23. Public Service Management Act, 1997

24. Sexual Offences (Jurisdiction) Act, 1996

25. Transfer of Sentenced Persons Act, 1995

B. Cases

1. A & B v. Eastern Health Board, Judge Mary Fahy, C and the Attorney-General (Notice Party), unreported High Court, 28 November 1997

2. Attorney-General v. X & others [1992] IR 1, & [1992] IR 16

3. Kavanagh v. Ireland [1996] 1 I.R. 321 and [1996] I.L.R.M. 133

4. In the matter of article 26 of the Constitution of Ireland and in the matter of the Employment Equality Bill 1996, unreported Supreme Court, 15 May 1997

5. In the matter of article 26 of the Constitution of Ireland and in the matter of the Equal Status Bill 1997, Supreme Court, 19 June 1997

C. Other miscellaneous documents

1. Bunreacht na hÉireann, 1937

2. Department of the Environment and Local Government - Guidelines Residential Caravan Parks for Travellers, 1997

3. Department of the Environment and Local Government - National Strategy for Traveller Accommodation, 1996

4. Department of Health - Health Board Regulations Governing the Placement of Children in Care, 1995

5. Department of Justice, Equality and Law Reform - Annual Reports for 1995, 1996 and 1997 by the Minister for Justice, Equality and Law Reform on the Operation of the Transfer of Sentenced Persons Act, 1995

6. Department of Justice, Equality and Law Reform - Employment Equality Bill, 1996 - A brief guide

7. Department of Justice, Equality and Law Reform - Second Report by the Minister of Justice, Equality and Law Reform on the operation of sections 2, 3, 4, 5 and 6 of the Criminal Justice (Drug Trafficking) Act, 1996 during the period 9 September 1996-27 June 1997

8. Draft Prison Rules, 1994

9. Garda Síochána Complaints Board, Annual Reports, 1995 and 1996

10. Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993: Four Reports to the Taoiseach, pursuant to section 8 (2) of the Act

11. Prison Visiting Committee Reports 1995 and 1996

12. Report to the Irish Government on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 September to 5 October 1993

13. Response of the Irish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Ireland from 26 September to 5 October 1993

14. Follow-up report of the Irish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Ireland from 26 September to 5 October 1993

15. Report of the Constitution Review Group, May 1996

16. Report of the Task Force on the Travelling Community, 1995

17. Report of the Task Force on Violence Against Women, 1997

18. First Progress Report of the All-Party Oireachtas Committee on the Constitution, April 1997

19. Second Progress Report of the All-Party Oireachtas Committee on the Constitution, April 1997

20. "A New Electoral System for Ireland?", by Michael Laver, published by the All-Party Oireachtas Committee on the Constitution in association with the Policy Institute of Trinity College Dublin, 1998

21. Fourth World Conference on Women - First Report on Implementation of the Platform for Action, December 1996

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